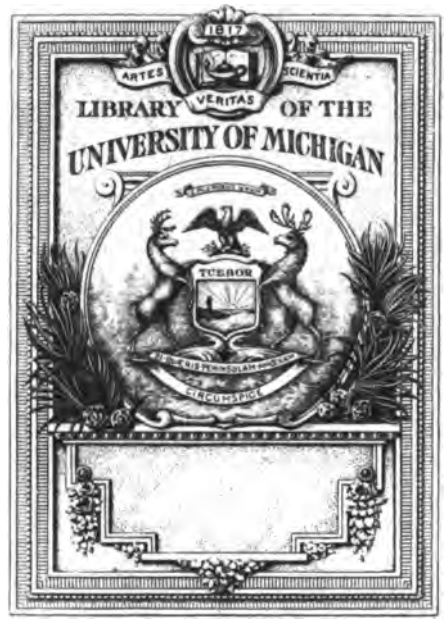
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EXCESS CONDEMNATION

A REPORT

OF THE

Committee on Taxation

OF THE CITY OF NEW YORK

WITH A REPORT PREPARED BY

HERBERT S. SWAN

FOR THE

National Municipal League

NEW YORK

1915

COMMITTEE ON TAXATION OF THE CITY OF NEW YORK.

APPOINTED APRIL 10, 1914,
BY HONORABLE JOHN PURROY MITCHEL, MAYOR.

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* Resigned January 12, 1915.

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Report of Committee on Taxation.

May 20, 1915.

Hon. John Purroy Mitchel,
Mayor of the City of New York,
New York.

Dear Sir—The method of acquiring property for public use, known as excess condemnation, has been carefully considered by this Committee as a possible means of creating additional values and lessening the ultimate cost to the city of street openings and similar improvements.

A constitutional amendment permitting excess condemnation was adopted in this state in 1913. This is of especial importance to the City of New York. The legislature at its last session passed an act which became law May 11, 1915 (Laws of 1915, Chapter 593), empowering the City of New York to exercise this power. There are three main reasons for granting to the city power to condemn more land than is needed for the actual improvement with power to sell or lease the surplus:

(*a*) Control of land adjacent to improvements.
(*b*) Re-plotting of remnants and irregular building lots.
(*c*) Saving in expense to the city through sale of abutting property at increased values due to the improvement.

Control of Land Adjacent to Improvements

American cities have been hampered in effective city plan development and in creating dignified and artistic public places by the free and unrestricted use of abutting property by private owners. Many of our finest squares and parkways are lined with stables, billboards, shops, factories, gas tanks, saloons. There is no orderly architectural arrangement. One and two-story buildings adjoin twelve and twenty-story structures. Residences, shops, stores, factories crowd one another close. This condition has decreased property values and the attractiveness of public places. It is to the advantage of the private owner as well as to that of the city that neighborhoods should not be allowed to run down, that our public places be surrounded by buildings in keeping with the improvement.

The city should have the power to sell or lease the excess land subject to suitable restrictions. If this is done, New York will be enabled to develop streets and public places comparable to those of Paris and Vienna.

The convenience and enjoyment of the community should take precedence of the whim of the private owner.

We have but to look at our bridge approaches, our small parks, our public squares and places to realize that successful city planning requires the control of adjacent property.

Re-Plotting of Remnants and Irregular Building Plots

New York furnishes several " horrible examples " in cutting new streets through sections already built up without excess condemnation. Delancey Street in Manhattan and Flatbush Avenue Extension in Brooklyn have both been held back in development and in the increased value which the improvement promised, by the small, irregular, odd-shaped building plots which were left. These are in many cases unsuited to proper building unless united with adjoining properties held by other owners. The public loses in tax value and sightliness and the private owner is injured because his lot is not available for suitable development. A glance at the maps accompanying this report, showing the lot lines after these streets were cut through, is proof conclusive of loss and waste under the old system. Although the Flatbush Avenue Extension has been practically completed for three years and despite its strategic position, development has not begun. The street still looks, to borrow an expression of Lawson Purdy's, " as if it had been devastated by an earthquake." European nations long ago met this situation and have empowered local governments to relocate and replot such areas. Excess condemnation would leave the city free to rearrange and subdivide the land fronting the improvement into plots of the size and shape best suited to the proposed development.

Saving of Expense to the City Through Sale of Abutting Property at Increased Values Due to the Improvements

While the necessity for excess condemnation rests mainly upon the control of adjacent land and the replotting of remnants, a substantial saving of dollars and cents will result in many instances. It must not be assumed that excess condemnation will in every case bring revenue to the city or reduce the cost of public improvements. Sometimes excess condemnation is justified for social purposes alone, but often financial gain to the city will also result. It is equitable that the increased value which arises solely from the enterprise of the community in constructing a boulevard or a park or public square should go to the city and not to those who are fortunate enough to own property in the path of the improvement. If the cost of public improvements is reduced the city will be better able to continue its efforts for a rational and convenient city plan without too great a financial burden.

We can learn much from Livingston Street, in Brooklyn. In 1905 this street was widened from 50 to 80 feet by taking 30 feet from the southerly side. Livingston Street runs parallel to Fulton Street, and the purpose was to relieve the overcrowded condition of Fulton Street. The land to a depth of 100 feet on the southerly side of Livingston Street, together with the improvements, was assessed at $1,268,700. The awards made for taking 30 feet from the front amounted to $1,989,890, or about 57 per cent. in excess of the assessed valuation of the entire property. In many instances the buildings were easily adapted to the new conditions, new fronts were

built, and as a result of the improvement the rental and fee value was largely increased. In 1911, six years after the widening, the assessed valuation of the remaining land, though but 70 feet in depth, had increased 219 per cent. over the assessed valuation of the land 100 feet in depth in 1905. One-quarter of the cost of the widening of the street was at first assessed upon the local property owners. The area of assessment was so large that a considerable portion of the cost was to be paid by owners of property not directly benefited. But through an act of the legislature the assessment was canceled and the cost of the entire proceeding was paid by the city by the issuance of bonds.

Where the city is compelled to take a considerable portion of a lot or building it has to pay practically the cost of the entire parcel and would do better to acquire the fee of the whole plot and secure the benefit from the increased value of the remainder.

The experience of London in financing street improvements by excess condemnation should be a valuable help to us. From 1889 to 1913 the London County Council used excess condemnation in forty-five street proceedings, the gross cost of which was $44,246,125.

Without excess condemnation extensive replanning and reconstruction in the older parts of London could not have been carried out. While revenue is not the principal reason for excess condemnation it is a strong incidental consideration.

We have secured from the National Municipal League an unpublished report on the subject of excess condemnation, prepared for one of its committees two or three years ago by Herbert S. Swan. This report, revised and brought up to date, is transmitted herewith. It contains important information not generally accessible in regard to the use of excess condemnation in London and other English cities and also a history of the development of the movement for excess condemnation in this country. We believe that this report should be made available to the public, and therefore we recommend that it be printed as promptly as possible for general distribution.

The New York City Excess Condemnation Act

The act which has just become law inserts in the Charter sections to be known as 970-a and 970-b. It gives to the city power to acquire more property than is needed for the actual construction of an improvement and permits the Board of Estimate and Apportionment to authorize the taking of such excess lands. The city may not take additional land beyond what is sufficient to form suitable building sites abutting on the improvement. We recommend that the act be printed as an appendix to this report.

Respectfully submitted,

(Sgd.) ALFRED E. MARLING,
Chairman.

REPORT

ON

EXCESS CONDEMNATION

PREPARED BY

HERBERT S. SWAN

FOR

THE NATIONAL MUNICIPAL LEAGUE

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CHAPTER I.

THE ARGUMENT FOR EXCESS CONDEMNATION.

The case for excess condemnation must, in the main, rest on two arguments—the replotting of remnants and the control of land adjacent to improvements. The Massachusetts Committee on Eminent Domain stated the case for the replotting of remnants most ably in the following words:

> "The land abutting on any existing street is divided and arranged in lots, which as well as the circumstances have admitted, are adapted to the street in its present condition, and the buildings thereon are constructed in conformity therewith. Any widening of the street not only destroys the existing buildings, but, by reducing the size of the abutting lots, leaves the residues or remnants of many of them of such shape and size as to be entirely unsuited for the erection of proper buildings unless and until these remnants have been united with the adjoining properties, generally with those in the rear, which are thus enabled to extend out to the new street lines.
>
> "The same condition is found, and frequently even to a greater extent, when a new thoroughfare is laid out through existing blocks covered with buildings.
>
> "Hence, when an existing street is widened or a new thoroughfare is laid out under the present system, the lots on one or both sides of the new or widened street are left in such condition that, until a rearrangement can be made, no suitable buildings can be erected, and the public benefit to be derived from the improvement is in great measure lost." (1)

So serious and far-reaching in their effect are these disastrous economic consequences resulting from the present system of widening old and laying out new streets, that they furnish the strongest argument in favor of the adoption of excess condemnation.

The maps used by Mr. Lawson Purdy before a committee of the New York Assembly at Albany, in advocating the adoption of a resolution to amend the Constitution so as to authorize excess condemnation, demonstrate this advantage resulting from excess condemnation more eloquently than any words.* These maps graphically present the infinitesimal morsels, the narrow, elongated gores, and the shallow remnants with diagonal fronts of varying widths, so frequently left by street improvements. In some instances the angles are not right angles; and the opposite sides of the same lot are neither parallel nor equal. When Delancey Street in New York was widened to provide for the bridge approach a tapering strip with an area of some 90.8 square feet was left extending along the street

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(1) Mass. House Doc. No. 288, Leg. Sess. 1904, pp. 4-5.

*The writer is indebted to Mr. Purdy for the maps and photographs used in this report to illustrate New York conditions.

for more than one hundred feet with an average width of ten and thirteen-sixteenths inches. Several other strips less than ten feet in width were left fronting along the widened thoroughfare for an equal distance. These strips robbed the lots adjoining them in the rear of their natural frontage on Delancey Street.

A thoroughfare has been proposed in Boston, which, when completed, would leave only 48 per cent. of the whole area of the several estates through which it would cut, the highway itself appropriating 52 per cent. of the sum of the adjacent plots. Remnants of irregular shapes and sizes and with an average depth of but 34 feet, would be left fronting on this improvement for a distance of 5,720 feet.(2)

The following are examples of plots left by improvements actually made in New York:

At the corner of Elizabeth and Delancey Streets a triangular segment 9.10 x 1.51 feet in dimension, or 6.87 square feet in area; between Mulberry Street and Cleveland Place on Delancey Street, a segment 1.47 x 8.98, or 6.59 square feet in area; between Barclay and Vesey Streets on West Broadway, a segment 2.6 x 13.5, or 17.27 square feet in area; on Prince Street and Flatbush Avenue, one 4.3 x 10.3, or 21.96 square feet in area; on Lafayette Street and Flatbush Avenue, one 1.7 x 6.4, or 5.28 square feet in area; and on Lafayette and Pearl Streets, one 4.8 x 9.2, or 21.63 square feet in area.

It is self-evident that the utility for commercial purposes of the lots fronting on these street extensions and widenings is greatly impaired. Lots which, if united under single ownership, would afford sites for substantial business blocks commensurate with the importance of the street, and which would bring in large rents, are now on or very near the margin of no-rent land. They are so small and irregular in size as to be totally unfit for improvement. "There are streets in New York today," says Mr. Lawson Purdy, "which have been widened for ten years but still look as though they had been devastated by an earthquake. The reason is that when the map is inspected it is found that there are all sorts of small bits of land in separate ownerships, just as they were when the street was widened."(3)

Since each parcel, by the mere fact of its adjacence, commands the values of the neighboring plots, every owner becomes, as it were, a monopolist. Knowing the strategic position of his own remnant and that its union with any other would immediately, without any effort on his own part, result in a greater value than the sum of the two separately, each proprietor overestimates the true importance of his own plot and shrewdly bargains

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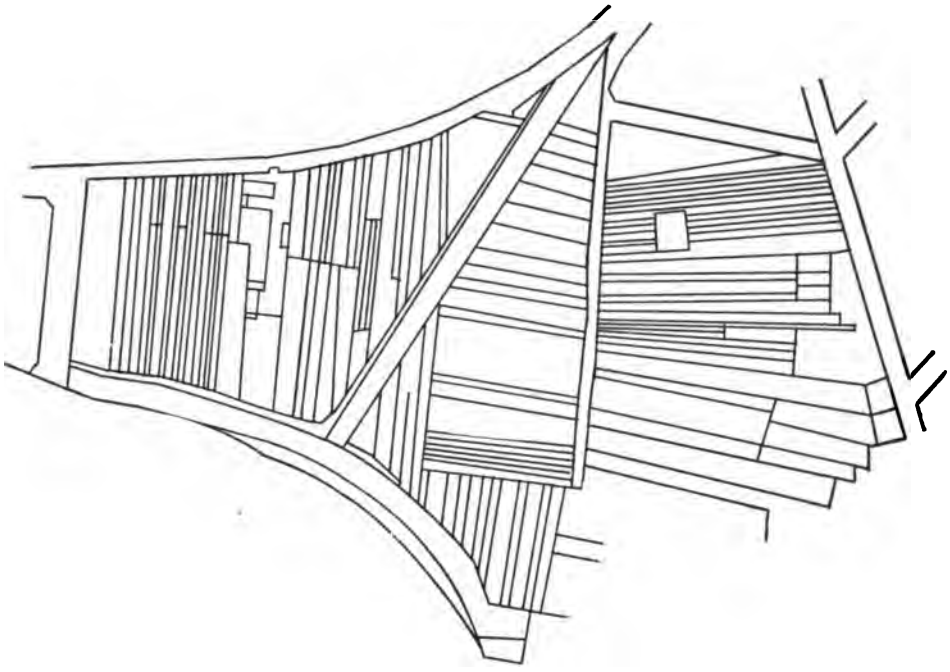
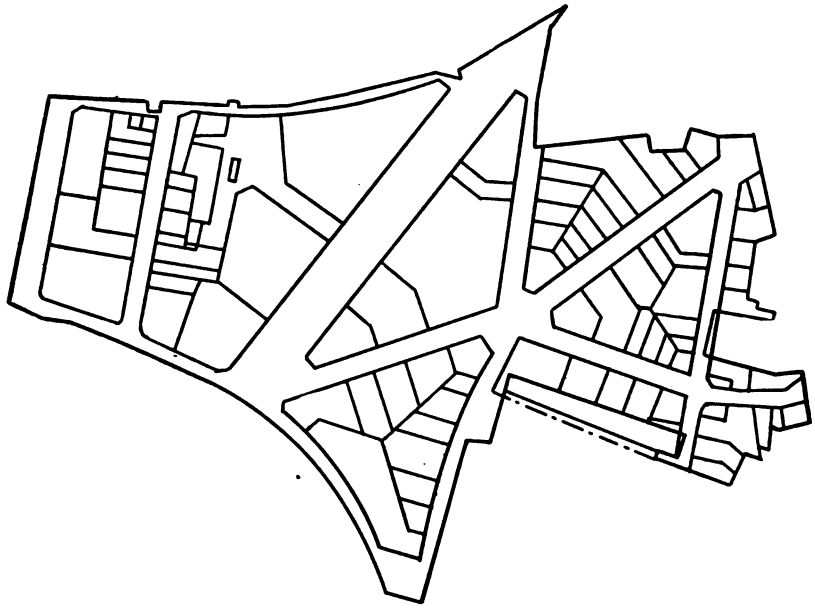
(2) Preliminary report of the Board of Railroad Commissioners, the Board of Harbor and Land Commissioners, the Boston Transit Commission and the Metropolitan Park Commission, sitting jointly, relative to public improvements for the Metropolitan District, Senate Document No. 27 of the Commonwealth of Massachusetts, 1910, pp. 9-10.

(3) National Conference on City Planning, 1911.



BEFORE REPLOTTING



AFTER REPLOTTING

REPLOTTING IN FRANKFORT

From Der Städtebau, by J. Stübben, 1907.

to get not only the proportion that his own parcel contributes to this increased value, but also as much more as he is able to wring from the purchaser. Not succeeding in his designs by legitimate means, the owner, if he be unscrupulous, sometimes erects so objectionable a building on his land or puts the land to such a use as practically to coerce the adjoining owner into either purchasing it at an exorbitant price or selling his own at a great sacrifice. The limited power of eminent domain, heretofore existing, has often served to make the ultimate development of the city dependent upon petty jugglery.

In some instances, remnants owned by estates may be so tied up as to make it impossible to sell or develop them.

Until a concentration of ownership takes place, the ripening of the unearned increment is held in abeyance; if the separate parcels are never united, it is completely stopped. Sometimes the increment which would naturally be expected is never enjoyed by anyone to its full extent, and the city, which creates the benefit, reaps none at all. Even though the property owners are deterred from realizing upon the unearned increment, they are, nevertheless, obliged to pay the special assessments levied to pay the cost of the improvement. Excess condemnation not only relieves the land owners from this burden, but accelerates the city's growth and prosperity by insuring the quick and sure development of its thoroughfares.(4)

Excess condemnation is of benefit not only to the community, but frequently to the private owner as well. The Massachusetts Committee on Eminent Domain puts it thus:

> "It frequently happens that an owner, the greater part of whose estate is necessarily taken for a public work, would prefer not to be left with the remnant on his hands, and if an opportunity were offered, would voluntarily request the city to take the whole estate.

(4) In making plans for the rebuilding of an area destroyed by earthquake, fire, flood or storm, the power to effect a radical replottage is often desirable. German experience is of particular interest in this respect. The writer is indebted to Mr. Louis Roth for the following paragraphs:

"The ownership of suburban areas in German cities is frequently subdivided into such small strips among peasant proprietors that a complete collation and re-allotment of the property is essential to its development for urban building purposes. Legislation has recently been passed providing for the compulsory pooling of such holdings with a view to their subsequent re-distribution into lots of the most economical shape and size for improvement. (In Prussia: Frankfort (1902), Cologne and Posen (1911), Wiesbaden (1912); in Baden (1896); in Saxony (1900); and in Hamburg (1892).

"In Frankfort the re-distribution may be proposed either by the municipality or by a majority of the owners provided they own more than half of the area. All the land affected by the scheme, including streets and public places, is pooled and treated as one tract. Only market gardens, nurseries, parks and land intended for the perpetual use of the state may be excepted from the scheme.

"In the re-apportionment, the land required for streets and public places is first set off and allotted to the city. The remaining land is divided into plots and distributed among the several owners. The allotted plots must be relatively of the same area as the pooled plots, due allowance being made for the land deducted for streets and public places. Baden and Saxony, unlike Frankfort, make value and not area the basis of re-allotment.

"So far as possible the allotted plots must be in the same location as the pooled

> Many people recognize that there is less opportunity for differences of opinion upon the question of market value of a whole estate than over the more complicated question of the value of the portion which has been taken, and the damages to the remainder by reason of such taking; and hence a system under which the city could acquire the whole estate would be productive of greater ease in the settlement of damages, and less likelihood of litigation over the question involved."(5)

The advantage of control over the character and use of the buildings fronting on an improvement also justifies excess condemnation. By placing suitable restrictions when re-selling the surplus land, the city will secure harmony in the architectural treatment of streets.

The question is largely one of municipal æsthetics. The effect of an improvement is to a very considerable extent dependent upon the beauty of its surroundings. To secure the greatest harmony it is necessary that each building be designed with regard to the general final result. A writer in an English periodical states the case ably:

> "One principle which ought to govern street architecture is surely that consideration should be had for neighboring buildings. Street architecture is social architecture, and it ought to conform to those rules of convention by which men in society are governed. Buildings in a town street cannot indulge in the freedom that is permissible to a house in the country any more than the owner can live in town with the same easy disregard of appearances that he enjoys when he is away.
>
> "Architecture may be guilty of social offenses quite as much as the architect. Violent interruptions, startling contrasts of demeanor, disregard of the conventions of society, efforts to shout down and overpower his company, which would put a man outside the pale in the civilized world, find a very close analogy in the pre-

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plots. Pooled plots which are so small that the allotted plots would be unsuitable for improvement are consolidated to form plots of convenient size. Where such plots are all pooled by the same owner, these mergers are effected without difficulty. Where such plots, however, are pooled by different owners, each of the several owners concerned must give his consent to the common ownership of the allotted plot. If this consent is not forthcoming, the city pays full compensation to the owners, acquires title to the property, and is free to dispose of it in any manner it sees fit.

"The cost of a scheme is assessed upon the owners in proportion either to the benefits conferred upon them or to the frontage, area, position or value of their allotted plots. Compensation is allowed owners for the following items:

"1. All land in excess of 35 per cent. of the area taken for streets or public places in schemes initiated by the city; in excess of 40 per cent. in schemes initiated by the owners.

"2. Buildings not returned to their respective owners in the allotment.

"3. Any special value attached to land used for such purposes as market gardens or clay pits.

"4. Any loss of value that may be inflicted on a pooled plot in the allotment.

"German cities do not have the right to exercise excess condemnation in the case of street improvements. The Prussian Canal Law of April 1, 1905, providing for the construction of a canal from the Rhine to the Weser, however, empowers the State to take the land within one kilometer (five-eighths of a mile) of the canal with a view to intercepting the increased value."

(5) Mass. House Doc. No. 288, Leg. Sess. 1904, p. 6.

tentious buildings that one often finds thrust into the streets and squares of London, without the least regard for the style of the work they interrupt or the scale of the buildings they overshadow.

"Ordinary houses should subordinate themselves to buildings which from their public uses or their architectural importance may fairly claim precedence. In fact, there should be a 'comity' of conduct in architecture as well as in society; any violation of which should be condemned by public opinion as in bad taste, inartistic and intolerable." (6)

As has been pointed out, leaving shallow and misshapen remnants in the possession of private owners hampers the city's economic advancement. As much can be said of its æsthetic development. Frontages which, if connected with adjacent land, would furnish sites for substantial and ornamental structures, are now occupied by ugly shanties or billboards.

"A park surrounded by ramshackle buildings is not a beautiful place," says Mr. Andrew Wright Crawford, "unless it is so large that these eyesores can be 'planted out.' But in the case of a parkway, playground or small city park, the architecture of the abutting buildings cannot be planted out. The height and general design of their facades, and the use to which they are to be put should be under the control of the public * * * if the park, parkway or playground is to be really beautiful." (7)

Describing the situation in Boston, the Massachusetts Committee on Eminent Domain says:

"It often happens that the owners of these remnants, desirous of deriving some income, erect temporary structures, unsuited for proper habitation or occupancy. Such structures are frequently made intentionally objectionable, both in appearance and in the character of their occupancy for the purpose of compelling the purchase of the remnants at exorbitant prices. The result is that a new thoroughfare, which should be an ornament to the city, is frequently for a long period after its construction disfigured by unsightly and unwholesome structures to the positive detriment of the public interests. This condition, which seems inevitable under the present system, may operate to prevent the undertaking of much needed street improvements." (8)

If our cities are ever to be consistently beautified, it is certain that the state will have to take a hand in the matter. Leaving the unrestricted choice of structural material, height of building, and design of facade to the owner, means anarchy in architectural treatment. Were it not for the failure of our courts in most instances to recognize æsthetic considerations as a ground for exercising control over property, such statutory regulation would be far preferable to the indirect and cumbersome procedure of excess condemna-

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(6) T. G. Jackson, Journal of the Society of Arts, Vol. LIII (1904), p. 107.
(7) Brief *Sur* Constitutionality of Excess Condemnation, Senate Doc. No. 422, 61st Congress, 2nd Sess.
(8) House Document, 288, Legislative Session 1904, p. 5.

tion. It is not likely, however, that such regulation can be made available in this country in the near future, nor is it to be expected that architectural control will ever, except on the rarest occasions, be the primary motive for exercising excess condemnation—Americans have so little appreciation for the æsthetic city.

The expediency of condemning excess lands for the purpose of obtaining control over the character and use of buildings fronting on an improvement should be weighed against that of other means for accomplishing the same result—restricting the height of buildings, segregating buildings according to occupancy and prescribing building lines. The police powers so exercised may at times serve the same purpose as excess condemnation and be resorted to in place of it.

A limitation on the height of buildings was held constitutional by the Supreme Court of Massachusetts and the Supreme Court of the United States in *Welch v. Swasey,* 193 Mass., 364; 79 N. E. 745; 214 U. S. 91. The constitutionality of laws establishing industrial and residential districts has thrice been sustained by the Supreme Court of California (*Ex parte Quong Wo,* 161 Cal. 220; 118 Pac. 714; *Ex parte Montgomery,* 163 Cal. 457; 125 Pac. 1070; *Ex parte Hadacheck,* 132 Pac. 589). The opinion in *Eubank v. City of Richmond,* 33 Sup. Ct. 76, 226 U. S. 137, indicates that a law establishing building lines would probably be held constitutional by the Supreme Court of the United States.

Recoupment through excess condemnation and the subsequent sale of excess lands at an enhanced value is justified on essentially the same grounds as the tax on unearned increment. The increased value being a growth exclusively due to the enterprise and initiative of the community, it is entirely proper and just that the city, and not the property owners abutting on the improvement, should obtain the benefit. By practicing recoupment, the city only appropriates the added value resulting from the improvements made by it. Instead of making a present of this increment to the land owners, the city appropriates it and applies it on the cost of the work, reducing the amount to be collected from the adjacent property owners or from the taxpayers.

A lot often has what may be called an integral or unit value, and, so far as cost is concerned, it matters little, if at all, to the city whether the whole or only a part is taken. This is especially true of improved land. Where part of a structure has to be taken, the city is invariably obliged to pay for the whole. In such cases, the city might utilize recoupment to exceedingly good advantage. As the initial cost of the improvement would not be augmented by such extra takings, the sums realized by their sale would be clear profit.

The widening of Livingston street in Brooklyn furnishes an excellent illustration of this point. In 1905 this street was widened from 50 to 80 feet. To effect the improvement, which was about 3,500 feet long, the lots

on the southerly side of the street were reduced from a depth of 100 feet to 70 feet.

The awards in the proceeding amounted to $1,989,890. The land in 1905 was assessed at $649,150; the buildings at $619,550. The assessment of land and buildings together was $1,268,700. The awards exceeded the real estate assessment, a figure supposed to represent the fair market value of the property, by $721,190 and the building assessment by $1,370,340.

The city would clearly have profited by excess condemnation in this instance. It had to pay full damages, if not considerably more, for both the land and buildings. For the buildings the owners were entitled to full damages as the improvement destroyed practically all the buildings on the widened side of the street. For the land, on the other hand, they were not entitled to full damages. Even had there been no resulting local benefit from the improvement, the 70-foot lots fronting on the new thoroughfare would have been worth nearly as much as the 100-foot lots on the old thoroughfare. But the improvement did confer a distinct local benefit. In 1911 these lots had an assessed land value of $2,073,190, a sum $83,300 in excess of the awards made in 1905. Their assessed land value had increased 219 per cent. in the short space of six years.(9)

The city, in making this improvement, proposed to assess one-fourth of the cost upon adjacent property. The owners, however, obtained a mandatory act from the legislature relieving them from this "burden." The cost of the widening was, therefore, paid by the issuance of thirty-year bonds.

The percentage of recoupment obtained in making improvements will vary with the amount of land taken in excess of that required, the general shape and size of the parcels, the character of the neighborhood through which the thoroughfare is cut and the honesty and good judgment with which the scheme is carried out. Judicious expenditure on improvements, according to Mr. Andrew Young, Valuer to the London County Council, results in an appreciation in the value of land sites at least equal to the sum expended. In many instances the enhancement is very much greater. By facilitating the movement of traffic and by admitting light and air to areas formerly unsanitary, street improvements increase the community's general capacity for production, promote more salubrious conditions, and decrease the necessary cost of living. These benefits proportionately swell the site values and the taxable values of the city. But it by no means follows that these increased values always concentrate on the land immediately abutting the improvement. Although they usually tend to focus upon the adjacent property, and more especially upon that fronting the improvement, they might be diffused over a much larger area, perhaps the entire city. It is this factor that determines to what degree excess condemnation is likely to be successful financially. If the increased values are "bunched" in a

(9) For table showing the figures by lots see Appendix I A.

narrow zone surrounding the improvement, then recoupment will be most satisfactory in its financial results; but, on the other hand, if these are greatly scattered, little financial advantage is to be expected by its application. Realization upon these diffused values had better be left to general taxation.

Recoupment must be viewed rather as an incident in the achievement of a large social and political program than as an end in and by itself. The rate of turnover and the per cent. profit are tests of the success of business transactions. Although these furnish criteria for proving the financial success of excess condemnation they are by no means standards that gauge the resulting social benefits. Monetary reimbursement must often give way to consideration of other and greater interests in the community. The aims of excess condemnation are something more than mere pecuniary profit. Its conducement to civic beauty by regulating the elevations and facades of buildings, its promotion and encouragement of commercial and business development by affording sites of shape and size suitable to the erection of structures comporting with the potential importance and use of the city's thoroughfares, and the light, air and unobstructed view admitted to parks, parkways and playgrounds, are assets not subject to capitalization. Their value must be sought in the increased convenience and well-being of the community.

CHAPTER II.

FINANCING LONDON STREET IMPROVEMENTS BY RECOUPMENT.(1)

Prior to 1845, Parliament bound the municipality to take as nearly as possible the exact area needed for an improvement. But in that year, under the Land Clauses Consolidation Act, general rules were laid down governing the taking of surplus lands in the case of improvements authorized by special act of Parliament. The Land Clauses Consolidation Act did not confer any blanket power of excess condemnation upon the municipalities. The amount of land that might be taken and the period of time during which it might be retained by the municipality had in each instance to be specified in the special act passed permitting the municipality to undertake the improvement in question. The statute merely provided the rules of procedure to be followed after the passage of the special act.

The purpose that prompted the adoption of excess condemnation in England was frankly admitted to be that of recoupment. Yet the conditions governing its operation were very carefully drawn so as to protect the rights of private property of both the owners and the users of the land appropriated for the improvement.

In the first place, a city undertaking an improvement could not, unless the special enabling act otherwise specified, retain surplus lands without sale for a longer period than ten years after the date set in the special act for the completion of the work. The money obtained for excess lands was applied to defray the cost of the improvement. Superfluous lands, however, remaining unsold at the expiration of the ten-year period became the property of the abutting owners in proportion to the extent of their respective holdings.

> "The effect of this rigorous policy," says Mr. Clifford, "was to discourage, and sometimes altogether to prevent, the opening of new streets by local authorities, inasmuch as they could only acquire or retain the exact quantity of land necessary for laying out a street, while the frontages, with their greatly improved value, remained the property of private owners. Hence rate-payers bore the whole burden, while, apart from any advantage to public travel, private owners reaped the whole advantage of such improvements." (2)

The hardship which such a condition worked to the municipality is self-evident. Under certain conditions, the period given within which

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(1) The writer wishes to acknowledge his indebtedness to Mr. Frank W. Hunt of London for valuable corrections and suggestions with respect to the contents of this chapter. Mr. Hunt, who is one of the foremost authorities in England on the subject of recoupment, has for years been intimately associated with the London County Council in the making of street improvements.

(2) Clifford, History of Private Bill Legislation, Vol. II., p. 550-2.

the surplus land had to be sold might not be sufficiently long to permit the unearned increment to ripen. Moreover, the nearer the expiration of the prescribed time limit approached the more would the city be at a disadvantage in endeavoring to exercise its bargaining power. At the end it would probably be driven to what was practically a forced sale. Then, too, a panic might at any time occur and render a sale utterly impossible. The city was also kept from profiting by the rents that might be obtained by leasing the land, though the policy of renting has since proved most expedient.

In 1884, however, the Metropolitan Board of Works (Money) Act remedied this situation by empowering the London Metropolitan Board to retain until 1929 land acquired under acts passed prior to January 1, 1881, and until 1941 land acquired under acts passed subsequent to January 1, 1881.

This act, furthermore, provided that no owner should be forced to give up part of any house or building if he were willing and able to sell the whole. London sought exemption from this clause, especially where improvements merely involved the taking of forecourts. In 1862 this mandatory provision was modified so as to relieve the metropolis from the necessity of purchasing the whole where the desired part could be taken without material detriment to the remainder.(3)

The Land Clauses Consolidation Act, moreover, provides that persons of the working class displaced by an improvement had to be rehoused. No improvement involving the demolishment of twenty houses or more occupied either in whole or in part by persons of the laboring class, in any one parish, can be undertaken unless the secretary of state has first been satisfied that proper accommodations for the occupants have been provided in other dwellings. This provision has considerably enhanced the difficulty of carrying out improvement schemes. At times, it has proved very onerous, and the amount of time and thought expended in devising suitable arrangements has been very great.

> "So far," says Mr. Andrew Young, Valuer to the London County Council, "it has happened that in each case where the Council has undertaken the formation of a new street, the construction of which has entailed the acquisition in any one parish of more than

(3) A similar provision exists in the French, Italian and Swedish laws on condemnation. The Paris act of 1850 provides that the whole of any lot of which it is necessary to take a part shall be acquired when the owner requests it subject to three conditions: (1) That the parcel is reduced to less than one-fourth its area; (2) that the remnant has an area of less than one-fourth of an acre; and (3) that the owner possess no immediately adjoining land. (Mass. House Docs. 1904, Nos. 288 and 1096.) The Italian act of 1865 requires any special or immediate benefit conferred upon the part not taken to be deducted from the compensation for the part taken. Where this benefit exceeds one-fourth of the award the owner may exercise an option. He may either require the city to purchase the remnant or he may retain it and require the city to pay him further compensation. This additional compensation may not be less than three-fourths of the amount awarded for the portion expropriated subject to the limitation that the owner recover at least one-half of the reasonable value of his property. (Royal Institute of British Architects, Town Planning Conference Transactions, 1910, pp. 722-9.)

twenty houses occupied by persons of the laboring class, there has been in the immediate neighborhood of the new thoroughfare ample vacant accommodation for rehousing the persons displaced, in consequence either of large blocks of artisans' dwellings having been erected near the new street by private individuals or companies previous to the formation of the street, or having been a large number of empty rooms offered for letting in the same district. The Secretary of State, upon the Council representing to him that there was sufficient vacant suitable accommodation in the neighborhood of the new street for the persons to be displaced, has made full inquiry with the result that the Council has not been required to provide new dwellings for such persons.

"If it were considered necessary that some accommodation should be provided near the centre of the county within the limits of the property acquired, the receipts from the sale of surplus lands would be reduced very considerably, and the net cost of the improvement correspondingly increased. This would be the inevitable result, as it is found that it is not commercially possible to erect artisans' dwellings on valuable commercial land. If sites are offered for sale subject to the restriction to erect dwellings for the working class, it is found that the price realized represents only a proportion of the value of the land if sold without such restriction, in addition to the depreciation of property immediately adjoining.

"As an example of what this loss may mean, witness desires to refer to the case of Reid's Brewery, situated at the junction of Gray's Inn Road and Clerkenwell Road. This site contains an area of 139,400 square feet, and was purchased at its fair market value as commercial land at a cost of $1,000,000. Subject to the restriction as to the class of building to be erected upon it, the utmost price that could be given for it is, in witness' opinion, $220,000, so that a loss was sustained in this transaction of $780,000. Dwellings to accommodate 2,642 persons are being erected on the site so that the loss represents as much as $300 per person accommodated." (4)

The Holborn-Strand improvement alone involved the demolition of 600 buildings, and the displacement of 3,700 persons of the working class by the formation of the street itself, and an additional 3,172 by the clearance of the unsanitary area in the neighborhood of Clare Market. Just what the housing policy has cost London in its sum total is not known, but in this single instance it amounted to $1,500,000.

The acquisition of leasehold and the compensation for injured trade interests have proved heavy charges on the Council. The Massachusetts Committee on Eminent Domain thoroughly discussed this point:

"Whenever a public authority takes land by compulsory powers under the Lands Clauses Consolidation Act, 1845, every occupant of the property, whether freeholder or leaseholder, who has been carrying on a business on the property, is entitled to compensation, if he can show that dispossession will impair the good-will of his business. Good-will is the probability of the continuance of a business connection. If a business is of a city wide character, or is one which

(4) Royal Commission on London Traffic, 1906, vol. III, p. 316.

consists of orders taken, or patronage derived, from a widely extended area, a compulsory change of trade premises impairs the good-will very little. If, in addition, convenient premises can be acquired in the immediate neighborhood of the premises taken, the impairment of the good-will will be merely nominal, and the owner's lawful claim to compensation will be only in respect of any reasonable expenses which the taking of equally convenient new premises has rendered necessary. There will be practical destruction of the good-will only in those cases of retail trade and local trade which depend entirely on neighboring customers, and where no suitable premises can be found in the locality within which the business connection extends. And yet, in practice, the juries' awards for compensation are practically always based on the supposition of complete, or nearly complete, destruction of the good-will. The term "impairment of good-will" was not once used in the voluminous testimony on the subject of compensation for good-will taken in 1894 by the select committee of the House of Lords. All of the witnesses spoke of the capitalized value of good-will, stating that ordinarily it was four years' profits, but that sometimes it was taken at three, five, or six years' profits. Of course, the witnesses stated repeatedly that oftentimes the person dispossessed merely moved around the corner, or to the other side of the street."(5)

Until the present all leaseholds seem to have been purchased outright, whether long-time or short-time. It has, however, been suggested that a large sum might be saved were only the long leaseholds acquired and the short leaseholds permitted to run out. In this way, the Council would not only spare the cost of the short-time leaseholds, but also the amount that it would otherwise have to pay the holders of these leases for injured trade interests. It has been objected, however, that this would involve a considerable loss of interest, for many years in some instances, on the capital sunk in the freeholds until the leaseholds had expired. Those who favor this policy reply that the rents obtained in the meantime would sufficiently compensate for all interest charges thus incurred.

Trade interests may be injuriously affected by an improvement either by the displacement and removal of large numbers of the working class, or by the diversion of traffic from old streets to the one improved.

The English courts have limited damages in the case of injuriously affected trade interests to the following cases:

1. The damage or loss must result from an act made lawful by the statutory powers of the promoters.

2. The damage or loss must be such as would have been actionable, but for statutory powers.

3. The damage or loss must be an injury to lands, and not a personal injury or an injury to trade.

4. The damage or loss must be occasioned by the construction of the authorized works and not by their user.(6)

(5) H. R. Meyer, Mass. House Doc. 288, Legislative Session, 1904, p. 72.
(6) P. J. Edwards, History of London Street Improvements, p. 20.

Although there has never been any statutory authority for such a practice, the Council has always allowed the land owner, in cases of compulsory purchase, ten per cent. in addition to a fair market price. This additional allowance is considered by some authorities in the nature of a solatium to the owner for his loss of future increment; and by others as a compensation for the expense incurred by the owner in the reinvestment of his capital.(7)

> " It may well be mentioned," says Mr. Edwards, " that the acquisition of property always occupies a considerable amount of time. The negotiations and the due conveyance of the property necessarily occupy a lengthy period. Much as the Council may strive to press the negotiations to a successful issue the same spirit of expedition does not always characterize the action of the claimants and their agents. The public observing that the houses are not removed think that the Council is responsible for the delay, with the result that numerous complaints of dilatoriness are frequently made when the Council has been doing its utmost to carry out the improvement with expedition."
>
> " Under the Metropolitan Board, it was customary when an owner refused the amount fixed as the maximum limit for negotiation, for the Board to affix its seal to a formal offer which would be served upon the owner, and if he did not accept this, his claim was settled by the award of an arbitrator or by the verdict of a jury, such jury being summoned and empanelled by the Sheriff who would preside at the inquiry. The Land Clauses Consolidation Act provides that if the compensation claimed, or offered, shall exceed £50, and if the party claiming compensation desires to have the sum settled by arbitration, and signifies such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury, the compensation shall be settled by arbitration accordingly. The act further prescribes that unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such disputes shall be referred, and such arbitrators shall nominate and appoint an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of the act of 1845, or of the special act authorizing the improvement. Procedure before an arbitrator or a jury necessarily entailed a certain amount of delay, and in a few cases where it was necessary for the Board to obtain possession of lands before an agreement had been come to, or an award made, or verdict given, for the purchase money or compensation to be paid by the Board in respect of such lands, advantage was taken of the provisions of the 85th section of the act of 1845, which authorizes promoters to enter upon lands before purchase upon depositing in the bank by way of security either the amount of purchase money or compensation claimed in respect of such lands, or such a sum as shall, by a surveyor appointed by two justices, be determined to be the value of such lands, the promoters also being re-

(7) Frank W. Hunt. " The Tendency of Recent Modifications of the Lands Clauses Act," in Transactions of the Surveyors' Institution, 1912, Vol. XLIV, p. 117.

> quired to give a bond in a penal sum equal to the sum deposited in the bank. Full advantage of this power, however, has not been taken by the Board, as procedure under the 85th section is somewhat costly, inasmuch as the promoters are required to pay, in addition to the amount of purchase money or compensation, interest at the rate pound 5 per cent. per annum from the time of entering on the lands until the purchase money or compensation shall be paid to the claimant." (8)

As the general provisions of the Land Clauses Consolidation Act have always been incorporated into every special act authorizing an improvement, this describes the procedure in vogue to-day.

Experience in London has shown that owners of property are tempted to make arrangements in the way of new lettings or improvements, as soon as it is known that an improvement is contemplated along their holdings, so as to fleece the city. In some instances, the money thus exacted has enormously increased the cost of the work. An endeavor has been made by the Council, however, to meet cases of this kind by refusing compensation for improvements erected for the purpose of obtaining increased damages.

The Council has on several occasions attempted to enforce this rule, but in only one case has it been able to produce sufficient proof to receive a favorable verdict from the jury. That new interests have been created for the purpose of obtaining increased compensation there seems no doubt, but to prove legally that this is the prompting motive is very difficult. It has been suggested that if London should adopt a comprehensive scheme of street improvements to be carried out over a long period of years, it would be necessary to keep such plan wholly confidential and closed to the public, lest private land speculation and the creation of new interests should deprive the city of all recoupment.(9)

The City of London, by having to apply to Parliament for a special act in each case to enable it to undertake improvements, has been unfavorably affected in recouping its outlay. Where buildings have been demolished by their owners with a view to rebuilding, or devastated by fire, areas for projected improvements might have been obtained by the council at small cost. But the tardy process of special legislation has robbed the city of this advantage.

> "The Council's standing orders," says Mr. Edwards, "require committees to bring up schemes involving applications to Parliament not later than the first meeting of the Council in June, and it is provided that no report recommending an application to Parliament for further powers shall be adopted, unless with a view to an application in the session of Parliament next ensuing upon the date of the report, and unless the report be adopted before the Council rises for the summer vacation. This being so, nearly if not quite twelve months must elapse between the date of the Council's decision and

(8) Edwards, History of London Street Improvements, p. 174. Ibid, p. 19.

(9) Andrew Young, Royal Commission on London Traffic, Vol. III, 317.

> the time of obtaining the Act of Parliament; and the effect of this is that the opportunity for the Council to acquire, on favorable terms, vacant land or premises about to be rebuilt, is almost invariably lost. Several cases have occurred in which, if the Council had possessed compulsory powers of purchase, necessary street improvements could have been effected at comparatively small cost to the Council." (10)

In spite of these unfavorable circumstances, recoupment in London has on the whole proved eminently successful, though excess takings have usually not been so much for profit as incidental to the economical and convenient execution of public improvements.

During the period between 1855 and 1889, the Metropolitan Board of Works exercised the power of excess condemnation in 45 street proceedings. The aggregate gross cost of these improvements was $76,797,445. Of this amount, $26,230,530 was recouped through the sale of surplus lands. The total net cost was, therefore, $50,566,915. In other words, the monies received from recoupment amounted to 34 per cent. of the total gross cost, or 52 per cent. of the total net cost.

In the period between 1889 and 1913, the County Council exercised the power of excess condemnation also in 45 street proceedings. The aggregate gross cost of these improvements was $44,246,125. Of this amount $23,511,740 was recouped through the sale of surplus lands, reducing the total net cost to $20,734,385. In other words, the monies received from recoupment amounted to 53 per cent. of the total gross cost and to 113 per cent. of the total net cost.

The total gross cost of the street improvements effected in the entire period between 1855 and 1913 with the aid of excess condemnation was $121,043,570. Through a recoupment of $49,742,270 the total net cost of these improvements was reduced to $71,301,300. The recoupment amounted to 41 per cent. of the total gross cost and to 70 per cent. of the total net cost.

On July 1, 1913, the Council was executing 13 street improvements with the aid of excess condemnation. These improvements had an estimated gross cost of $10,678,525. The expected recoupment was $4,111,200, or 38 per cent. of the gross cost, reducing the estimated net cost to $6,567,325.

The per cent. recoupment obtained is proof that the power of excess taking has in the majority of improvements been exercised only incidentally for pecuniary profit. In 36 of the 90 improvements in which it was utilized between 1855 and 1913, the recoupment realized was less than 10 per cent. of the gross cost; in 16 between 11 and 20 per cent.; and in 14 between 21 and 30 per cent. In 66 improvements, therefore, the recoupment was less than 30 per cent. In only 24 improvements did it exceed 30 per cent. In 12 of these it was between 31 and 40 per cent.; in six between 41 and 50 per cent.; in three between 51 and 60 per cent.; and in three over 70 per

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(10) Edwards, History of London Street Improvements, p. 165.

cent. In these latter three, the recoupments realized were 72 per cent., 84 per cent., and 116 per cent. respectively.(11)

The small per cent. recoupment obtained in most of the proceedings is indicative not so much of the financial success or failure of excess condemnation as of the comparatively small quantity of additional lands taken over the absolute minimum required for improvements.(12)

In the one instance in which the recoupment exceeded the gross cost, the Northumberland Avenue Improvement (completed 1876), the street was cut through a central area, the ground of which was not built upon and which at that time did not have a business value. The operation, therefore, did not involve any compensation for disturbed trade interests. Moreover, all the land seems to have been bought from one owner, thus saving the expense of having to negotiate with many petty holders. The gross cost of the undertaking was $3,557,455. The recoupment obtained was $4,156,550, leaving thus a surplus of $599,095, or a net profit of 16 per cent. The large sum realized was due to the eagerness with which the excess land was acquired for the erection of large hotels and other handsome buildings fronting the avenue.

The most notable instance of recouping in recent years is the Holborn-Strand, or Kingsway improvement. It was considered for many years by the Council, but was not undertaken until 1899. The total area of the property dealt with was 28 acres, of which 12¼ were dedicated to the public in the form of new streets, leaving 15¾ acres available for building sites. The length of the street is 1,100 yards; the width 100 feet. It was at first intended to make the new thoroughfare only 90 feet wide, but this was changed upon the following recommendation of the Improvements Committee:

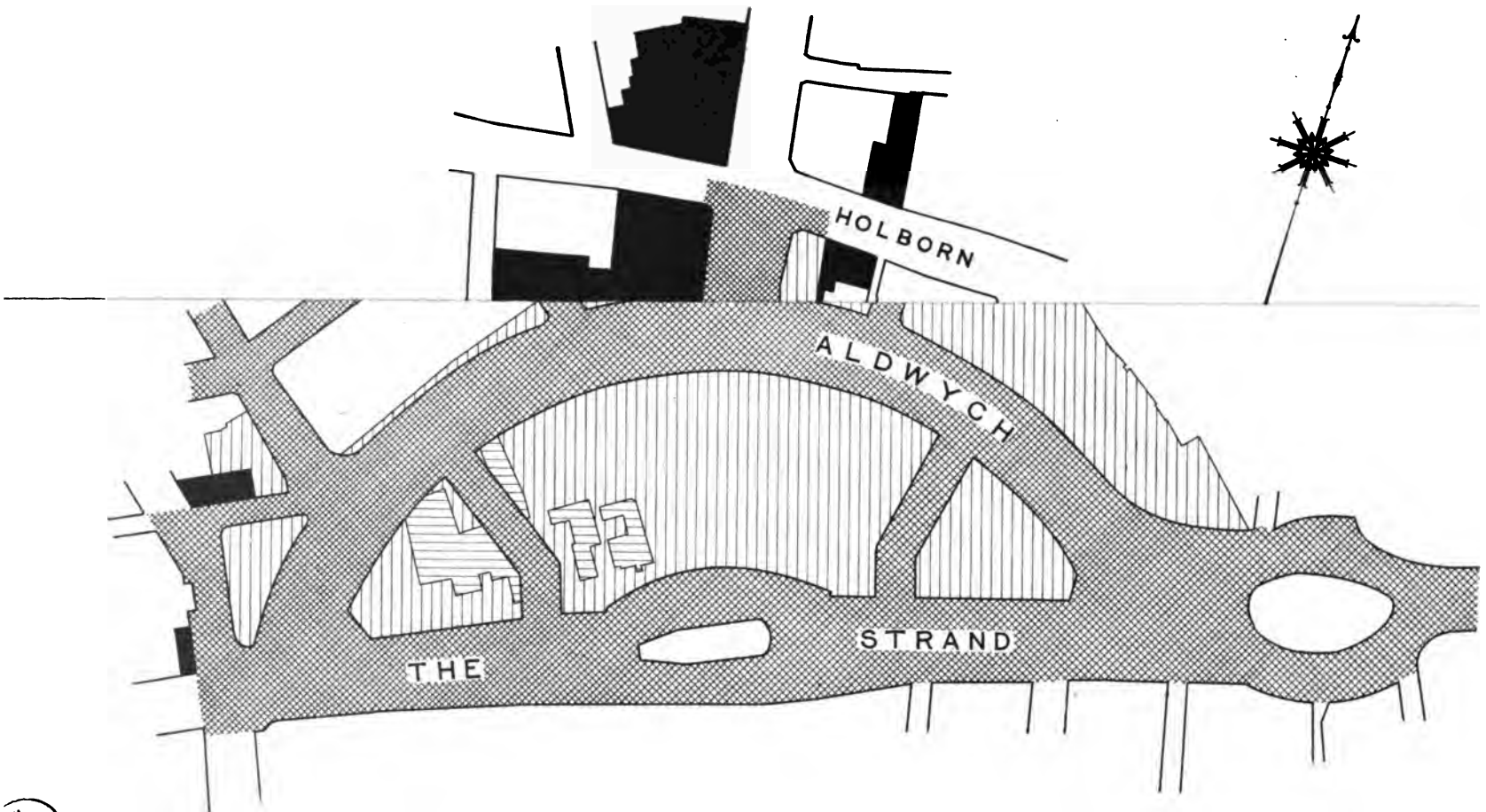
> " It will be noticed that we now recommend that the width of the street should be 100 feet, and not 90 feet as suggested in our report

(11) For table showing data for separate improvements see Appendix I B.

(12) The per cent. recoupment in London compares very favorably with that in Paris. Between 1852 and 1869, Paris laid out 56.25 miles of new streets having a total surface of 2,725,000 square yards. The area acquired in addition to this in the way of remnants and excess takings was much larger. The gross cost incurred in the construction of these streets totaled $259,400,000, the net cost $193,200,000. The recoupment was, therefore, $66,200,000, or 25 per cent. of the gross cost and 34 per cent. of the net cost.

The reason for the smaller per cent, recoupment in Paris is to a large degree due to the areal limitations on excess takings. The law specifically restricts takings to residues, which, on account of their shape and size, are unsuitable for wholesome buildings. To obtain the most desirable union of a parcel with adjoining land, the law provides for a careful appraisal of its value to the owner of such neighboring land as may have been selected for the combination. Should he fail to purchase it at this price within a week, the city may, if it so chooses, condemn his property for the purpose of uniting it to the remnant, and then re-sell the whole. These remnants are readily salable as the adjoining owners usually desire to secure the frontage on the new street.

Since the establishment of the republic, it has been the policy of the state to limit the size of excess takings. Formerly areas of 5,000 or 6,000 square feet were appropriated rather frequently, but at present the Council of State looks askance at takings exceeding 650 square feet in area. (Mass. House Doc. 1904, Nos. 288 and 1096.)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to the Council in October, 1895, and we think it well to state our reasons for this decision. If the street were made 90 feet wide, exactly the same properties would have to be acquired as for the 100 foot street, but there would be added to the area of the wider street about 16,475 square feet of land, which, in the case of the narrower street, would be sold as surplus land. But the increased width of the street would enhance the value of the remaining surplus land to an amount greater than the value of the additional land added to the public way, and consequently there would be a net saving by widening the street to 100 feet. It is estimated that, after taking into account the additional paving works involved, the 100-foot street would be £18,400 ($92,000) cheaper than the 90 foot. The estimated saving in the cost of the wider thoroughfare, together with the fact that the wider the street the greater will be the extent of the betterment area, has induced us to recommend that the street should be 100 feet wide."(13)

The operation involved the demolition of 600 buildings and the displacement of 3,700 persons of the working class. The clearance of the unsanitary areas in the neighborhood of Clare Market, which was included in the scheme, displaced an additional 3,172 working people. Provision for rehousing all these people had to be made. Furthermore, disturbed trade and other interests, numbering 1,500 in all, had to be compensated. No satisfactory figures as to the relative sums paid in compensation for injuriously affected business interests, cost of works, land, etc., have been obtained, but the total gross cost of the entire improvement, which was just recently completed, is about $24,330,000. Through a recoupment of $20,459,000 the net cost has been reduced to $3,871,000. The recoupment is, therefore, 84 per cent. of the total gross cost. The Council has not yet disposed of all its surplus land, but since the prices realized on the parcels sold are in excess of those at first expected, there is sanguine prospect that the net cost of the improvement will be less and the per cent. of recoupment correspondingly greater, than that stated.

The experience of London has been that it is more economical to form new thoroughfares than to widen old ones. The accompanying statement shows that the recoupment obtained in the case of thoroughfares widened by the Metropolitan Board was only 24 per cent. of the gross cost of the improvement, and 32 per cent. of the net cost, while in the formation of new thoroughfares it was 48 per cent. of the gross cost and 88 per cent. of the net cost. When an old street is widened, the Council has the advantage of merely one frontage, namely, that on the side of the thoroughfare which is set back. Since the increased value on the other side, which is equal to that on the one taken, accrues to the owners of those lots, recoupment is realized to the extent of only one-half of what might otherwise be obtained, and then only by favoring certain property owners at the expense of others. The Council has attempted to reach these values by the imposition of special

(13) Edwards, History of London Street Improvements, p. 256.

assessments, or betterments, as they are called in England. New streets, moreover, are usually laid out in sections where not so large a proportion of the property value is devoted to business purposes as is the case in widened ones. They are carried through property of a cheaper class, thereby involving a minimum outlay for injuriously affected trade interests.

> "The expense," says an official report, "of widening an old street—heavy as it may be—is usually less uncertain in amount, and entails a smaller initial outlay, but no general rule can be laid down as to the comparative expediency of widening and new construction, since the value of property varies greatly in different parts and so much depends upon the extent of the improvement, the character of the neighborhood, the interests that have to be acquired, the prospects of development and other considerations peculiar to the locality." (14)

To offset the larger initial outlay for land and the longer period elapsing before the recoupment matures, it is said that new streets have more in their favor when it comes to facilitating ventilation and improving unsanitary areas than widenings. By the construction of new streets, the traffic also gains by being able to use not only the area of the new street, but also that of existing thoroughfares which run parallel to it, while in widening a thoroughfare the gain is merely that of the land added to the highway.

The total length of the portions of old streets widened and the portion of new streets constructed between 1889 and 1913 was 14.588 miles.

In figuring the amount of recoupment, the Council does not seem to take into account charges for interest on outlay for surplus lands held pending the maturing of the unearned increment. To arrive at this sum it would be necessary to know what would have been the cost of the improvements had not excess takings of land been made. Charges of this nature, in order to obtain the net recoupment, can only be figured on the difference in the gross cost of improvement by excess condemnation and that of minimum necessary taking, since the interest on the least possible cost of a work cannot properly be subtracted from the gross recoupment, as it is identically the same whether or not excess lands be acquired. If this difference be large and if the period of the maturity of the unearned increment be long and the gross recoupment small, the compound interest might, of course, entirely wipe out the gross recoupment, and even more, changing what might have been an apparent profit into a deficit. But in conditions the reverse of these the unearned increment as it accrues will more than offset these charges. Thus, in the Holborn-Strand improvement it is estimated that the ultimate net cost of the work was more than $5,000,000 less than would have been the case if the Council had merely acquired the properties cut up by the new street. Obviously, the realization of the unearned increment in this case could have been held in abeyance a long time without wiping out this large

(14) Report of the London Traffic Branch of Board of Trade, 1908, p. 9.

saving. Allegations, therefore, to the effect that interest charges eat up the reimbursements obtained by the sale of surplus land should be accepted with considerable reserve, since those making them do not appear to consider the difference in the two costs as the basis of their reckoning.

The Council, having found that a greater return is obtained from the ground rents than that realized from the sale of surplus lands, is more and more retaining possession of the freeholds. In 1890 the estimated value of lands held was $11,215,000; in 1912 it was $35,581,690. The value of the surplus land held in 1912 was, in other words, almost treble that held in 1890. The magnitude of these holdings is emphasized by the fact that their value is now the second largest item used in the accounts of the London County Council to reduce its total debt to its net debt.

As soon as a new street is completed and opened for traffic the surplus land, after being duly surveyed and replotted, is ready for disposal. This task is in the hands of the Improvements Committee. Its proceedings are governed by an order of reference which empowers it to enter into contracts for the sale or lease of land, subject, of course, to the Council's sanction. In the first instance, unless the Committee is otherwise directed, all property sold or let must be submitted to public auction. Prior to the auction, a reserve, fixed by the Committee upon the recommendation of the Valuer, is put on each lot. These reserves are placed in sealed envelopes and are not opened unless substantial offers are received at the auction. In the case of lettings by private contract, it is the practice to consider such offers as are received together with the valuer's estimates. No information at all is given as to the prices which the Council would be advised to accept, unless it is perfectly clear to the Committee that the offers are made in good faith.

> "Inquiries," says the Improvements Committee in an official report, "are often received from persons who are seeking information only to enable them to hawk the property and thus earn commission or to make a profit by securing for themselves a larger offer than that which the Council would probably accept. It is clearly not to the interest of a public authority like the Council that such proceedings should be encouraged, and we therefore see no reason to depart from the present practice.
>
> "With regard to the suggestion that prices should be fixed at once for the various sites belonging to the Council we desire to point out that the more valuable portions of the Council's surplus property are of such a description that it is impossible to fix the true value of the sites until the market has been tested and the extent of the competition ascertained. Even in the case of ordinary property there have been several instances where the rent eventually received has been greatly in excess of that which, having regard to the previous transactions in property in the locality, we should have advised the Council to accept. The only object of fixing the rents would be to fix the minimum with a view to inviting offers. This might have the result of disposing of some of the lands more readily, but the difference between the minimum and the proper rent would accrue

> as profit to the lessees. We consider that such a course might lead to a state of affairs similar to that revealed at the inquiry into the work of the Metropolitan Board of Works. It will be sufficient, perhaps, if we quote three instances of the abuses which are likely to occur. In one case a site, leased by the Board for £560 a year was let very soon afterwards at a rent of £1,090. In another case property was sold for £1,500 which was resold within a year for £3,000; in a third case a site was resold at a profit of nearly £2,000 before the original purchaser had even obtained the land from the Board. Although there were other reasons, we think that these results may be chiefly attributed to the anxiety of the Board to dispose, as soon as possible, of its surplus lands. We conceive it to be the wish of the Council that, instead of a large profit being secured by private speculators out of dealings in its surplus land, every effort shall be made to obtain for the public adequate rents for the land belonging to the Council. We recommend that no departure be made from the present practice with regard to the disposal of the Council's surplus land." (15)

For variously assigned reasons, severity of building conditions, high prices, the erstwhile undeveloped commercial and business connections, the lettings in the Holborn-Strand area were a little too straggling to meet with the Council's approbation. Although the Council neither relaxed the building requirements nor lowered the fixed rentals, it was decided, upon the recommendation of the Improvements Committee, to offer some "counterbalancing inducements" to investors. Until a certain number of sites should be let and the commercial character of the thoroughfare established, the Council in 1907 adopted a resolution allowing lessees to pay for the first year, a peppercorn rent (i.e., a nominal rent), for the second 25 per cent., for the third 50 per cent., and for the fourth 75 per cent. of the ultimate rental. In this case, therefore, it would take five years before the Council came into the enjoyment of the full site value, but it would sacrifice nothing of the ultimate value of the land.

> "We think," said the Improvements Committee in recommending this step to the Council, "that this course will greatly promote the early initiation of building operations, which is a matter of supreme importance to the Council."

The increased control that the London County Council has been enabled to exercise through excess condemnation over frontages has proved a decided success. Not only have statutes empowered the city to control the general line of frontages, but also the height of buildings and the character of the porticos, balconies and verandahs proposed to be erected. Moreover, the Council is authorized, when letting land, to specify the minimum sum of money that may be expended upon new buildings. But even after having gone thus far, London does not seem to be satisfied. Sugges-

(15) Report of Improvements Committee, Nov. 28, 1906; Minutes and Proceedings of the London County Council, July-December, 1906, pp. 1442-3.

tions have been made that the Council, when planning an improvement, should invite the views of leading architects and engineers so that the best line for the new street, having regard not only to the requirements of traffic, but also to considerations of architectural effect, might be adopted. In doing this, care should be taken in planning the improvement so that it would not exclude beautiful buildings already erected from fronting upon it; but it should be so designed as "to fit them, and bring out their beauties and enhance their architectural effect." Some, in their desire for civic beauty and dignity, even wish to go so far as to have a general scheme drawn up providing for the principal features in the elevations of the buildings to front the new thoroughfare.(16)

In fact, this was done in the case of the Holborn-Strand improvement.. The Council resolved to hold a tentative competition for designs. It accordingly invited eight architects (four to be nominated by the Council of the Royal Institute of British Architects and four by the London County Council) to submit drawings for the elevations, each architect to receive an honorarium for his services. The competition was thus narrowly limited because it was feared the leading architects could not be induced to enter an "open" competition. Reporting on this occasion, the Improvements Committee said:

> "In our opinion every effort should be made to secure that the great thoroughfare from Holborn to the Strand in addition to utility should possess beauty and civic dignity, as some of the grand thoroughfares in certain Continental cities. Measures should accordingly be taken to insure harmony, though not perhaps identity of design, in the architectural treatment of the buildings to be placed upon the frontages of the new crescent, and on the northern side of the Strand, and perhaps in the main thoroughfare itself. If this be secured, the Council will obtain the highest possible amount for the land, and the ultimate net cost of the improvement will be reduced in accordance with the increased dignity which the new thoroughfare may possess." (17)

It has been asserted that when London, in order to economize, has avoided the acquisition of expensive buildings in laying out a new street by selecting an irregular line for its route, the recoupment has not been so great as otherwise it would have been. The costly buildings, purposely left outside the limits of deviation, have thrust unsightly and awkward ends into the frontage of the new avenue, ruining the development of its architectural features and thus impairing the amount of the augmented land values.(18)

Whether this "increased dignity" will perceptibly augment the recoupment is a question of considerable doubt. Within certain limitations, build-

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(16) Edwards, History of London Street Improvements, pp. 73-174.

(17) Journal of the Royal Institute of British Architects, 3rd Ser., Vol. VII. (1900), p. 439.

(18) Edwards, History of London Street Improvements, p. 21.

ing regulations will undoubtedly enhance the property's value, since it affords protection to its owner, but when these conditions encroach upon the irreducible minimum of personal liberty demanded by the Anglo-Saxon, a reaction may well be expected. " Increased dignity," much as it is to be desired in our street architecture, would then, instead of filling the coffers of the municipality, become a fixed charge, either in the way of deferred sales or leases and the loss of interest incident thereto, or the lower sale price at which the city would have to dispose of the land to induce the purchaser to accept its conditions.

CHAPTER III.

THE CLEARANCE OF UNSANITARY AREAS IN ENGLISH CITIES.

The Industrial Revolution caused an entire redistribution of English population. It marked the introduction of modern town life. The domestic system of industry gave way to the factory system. The economies and conveniences in the process of manufacturing by machinery caused great masses of men to migrate to the cities.

Eighteenth century transit facilities, being mainly pedestrian, and therefore having certain well-defined physical limitations, constrained people to live within a very narrow radius. As a result, the population, with each arriving contingent of immigrants, became more and more compact and congested. As each increment in the census registered an inexorable increase in land values, a greater number of persons were obliged to inhabit practically the same area. Houses were consequently huddled together, most compactly. Every available inch was built upon. Space was left for neither light nor ventilation. Room congestion of the most dire and ominous kind accompany house congestion. Dwellings which might have housed one family decently now contained as many families as rooms—and more. Neither age nor sex was respected. Each sex lived and slept promiscuously with the other irrespective of filial or marital relationship. These houses were built upon narrow and dark courts with only one end open. With approaching dilapidation these overcrowded structures became so plagueful as to endanger the very existence of the cities. By the seventh and eighth decades of the nineteenth century these unsanitary areas, inhabited by the working classes, had appalling death rates. Thirty, forty, fifty deaths per year for each thousand population in these slum areas was not an uncommon condition in any large city in either England or Scotland. In some instances the death rate rose so high as annually to wipe out one-twentieth of the population, or even more. In Whitechapel, London, it was 54 per thousand. In Bailie Street, Birmingham, it was 97 per thousand.

Not until the later sixties did the cities really awaken to the fact that something must be done. By that time the pestilential diseases and fevers raging in the slum areas had begun to affect the better residence districts. Then Parliament commenced to pass acts both of a general and of a special character enabling the municipalities to cope with the situation.

At first the general acts proceeded upon the principle that the responsibility of maintaining property in a sanitary condition should fall upon the owner. The community was enabled to step in and compel him to perform this duty in case of negligence. The Torrens Acts, 1868 to 1882, provided

for the gradual amelioration of unsanitary areas by empowering the local bodies, after having ascertained the cause of a dwelling being unfit for human habitation and the remedy for it, to serve notice on the owner requiring him to make at his own expense improvements laid down and specified by the council.(1) Houses unfit for human habitation were not to be used for dwellings. If the owner did not have the inclination to comply with the demands, which might in extreme cases even involve the total demolition of the building, he might within three months of the summons oblige the local authority to purchase his property. The compensation in case of dispute was to be fixed by arbitration. This provision, however, was repealed in 1879, and the council was given the power, in the case of repairs, to do what was necessary, charging the cost upon the premises, and, in the case of demolition, to scrap the entire house and to retain a sufficient amount derived out of the sale of structural material to recoup the outlay. The principle of betterment in slum areas was recognized in the amended Torrens Act of 1879, which provided that the arbitrator in assessing compensation should take regard of and make allowance for any increased value that might accrue by the execution of the scheme to other premises owned by such persons as made it necessary for the municipality to act. Property acquired by a city under this act had to be disposed of within seven years, or the Secretary of State could intervene and sell it. The act aimed primarily at repair, but since the patching up done by the owners seldom rendered the properties fit for human habitation for any great length of time, the authorities became rather adverse to its operation. The application of the law did not relieve congestion. Reconstruction being permitted, neither the number nor the closeness of houses was affected. Progressive as this law was, when compared with previous legislation, it was not sufficiently advanced to combat the evil unaided.

Owing to the fact that large areas were so defective structurally as to be incapable of repair, and so ill-placed with reference to each other as to require nothing short of total demolition and reconstruction to bring them up to a proper sanitary standard, Parliament, to supplement the Torrens Act, passed the Cross' Acts in 1875-1882.(2) The object of the Cross' Acts, in the words of the Commission of 1884-1885, was to do on a large scale what was contemplated by the Torrens Act on a small one. Since slum areas were frequently the property of several owners, and since it was not in the power of the several owners individually to make the necessary alterations, the local authority was granted the power of expropriation and purchase, and on the completion of its exercise the further power to proceed with schemes of reconstruction.

The act required the local medical officer either at his discretion, or at

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(1) To avoid confusing the reader the Acts are not mentioned separately. For the Acts see 31 and 32 Vic., c. 130; 42 and 43 Vic., c. 64; 45 and 46 Vic., c. 54.

(2) 42 and 43 Vic., c. 45, and 46 Vic., c. 54.

the request of two justices of the peace, or of twelve ratepayers, to make an official representation with respect to the health and sanitation of any area under his authority. Upon receiving this representation, the municipal council was to take his findings under advisement. If satisfied as to the facts in the particular case and as to its financial ability, the council had to declare the area unsanitary and proceed with its improvement. Though obliged to act, the council was given the option to include all or part of the represented properties as well as any neighboring lands necessary to make the sanitary improvement effective and to provide sufficient quarters for accommodating in suitable dwellings at least as many persons as might be displaced.

Having been approved by the council, a scheme required confirmation by the Secretary of State, who, in case of opposition by owners, lessees or occupiers, held an inquiry to determine its merits. This done, he might, if he saw fit, have the Local Government Board issue a provisional order allowing such action to be taken as he found desirable. Like all provisional orders, this, of course, had to receive sanction from Parliament. Since the Housing and Town Planning Act was passed in 1909, mere confirmation by the Local Government Board suffices to make a scheme effective.(3) The Secretary of State was also given the power to make independent inquiries into reported unsanitary areas and thus require the local authority to take action.

Both Cross' and Torrens' Acts were amended and improved from time to time, when their defects became apparent. But soon so many complicated amendments as to procedure had been made that it was rather difficult to say just what the law was. The two acts were, therefore, consolidated with new amendments, into a new statute, forming respectively Parts I and II of the Housing of the Working Classes Act, 1890.(4) Though several times amended, this act, in the main, contains the rules of procedure practiced to-day in clearing the slum areas.

Lands may be bought for clearances either by agreement or by compulsion, provided that such purchases take place within a reasonable time after the adoption of such scheme, usually three years. If the persons entitled to the first estate of freehold in the land proposed to be compulsorily purchased do not themselves choose to carry the scheme into effect or to co-operate with the municipality in doing so, the entire clearance devolves upon the council. In cases where the municipality and the land owner cannot come to an agreement concerning the purchase price, the Secretary of State appoints an arbitrator to adjudicate the dispute. Unless a jury is appealed to, the arbitration award is final. Since 1882, an appeal to a jury has been permitted only in instances involving sums of £1,000 or over. The original Cross' Act provided that a fair market value should be paid for

(3) 9 Edw. VII., c. 44.
(4) 53 and 54 Vic., c. 70.

the premises and the several interests involved as estimated at the time of commencing the scheme, due regard being had to the nature and then condition of the property, and to the probable duration of the buildings in their existing state, and to their state of repair, and all circumstances affecting their value, without any additional allowance for compulsory purchase.

Every safeguard, it was thought, had been taken to avoid excessive payments, but the desired results were not secured. The law was, therefore, amended in 1879 by having a premise unfit for human habitation evaluated as a nuisance, this valuation, after the estimated cost of abating such nuisance had been deducted, forming the purchase price. In 1882 a most drastic amendment restricted compensation in case of property so unfit as not to be reasonably capable of being made fit for human habitation to the site value plus the value of the scrapped materials. The probable duration of buildings is, of course, taken into consideration in fixing the price. But any addition to or improvements of the property made after publication of the clearance scheme is not to be included, unless necessary for its maintenance or proper repair. Any interests created after that date are absolutely ignored so far as recompense is concerned. In determining the fair market value, the arbitrator can allow no compensation for any present value due to the premises being put to illegal uses or to being so overcrowded as injuriously to affect the health of tenants. No legal allowance is made for compulsory purchase of lands judged to be unsanitary, and only 10 per cent. over and above fair market value is allowed for neighboring lands taken to make a more efficient scheme. The forced sale, however, seems always to have considerably increased the price paid for slum property in spite of all precautionary measures taken to protect the municipality against extortion. One authority, Mr. Nettlefold, asserts that compulsory purchase, even today, entails a payment anywhere from 10 to 15 per cent. above real value.(5) In its early slum clearances, Liverpool purchased unhealthy houses by agreement at less than half the price she was obliged to give for those obtained compulsorily. In some cases on record larger sums per square yard have been given in purchases by agreement than in those by compulsion, but almost invariably the explanation for this is found in the fact that the more valuable lands were those purchased by agreement.(6)

Allegations, furthermore, to the effect that corruption has added its share to the compensation granted, are not altogether wanting.

> "It has not been an uncommon experience," says Mr. Thompson, "to find enthusiastic supporters of these clearance schemes on many town and district councils in the shape of friends of those who own slum cottages which they want the taxpayers to take off their hands. Demolition schemes, under present conditions, are doubly profitable to this class, because they not only get an inflated value for

(5) S. S. Nettlefold, Practical Housing, 1908, p. 19.
(6) First Report of Royal Commission on Housing of the Working Classes 1884-5. Minutes of Evidence, p. 706.

the slums they sell, but they also get an increased rental for their other dwellings owing to the dispossessed tenants competing for rooms in the remaining slums, which they are compelled to go to on account of the house famine."(7)

That slum clearances are not always entered into with the purest motives is also corroborated by Mr. Nettlefold. "Our slums," he says, "are gilt-edged securities. People who want to get rich quickly and do not care very much what method they adopt to attain that end, buy slums. The worse the slum, the better the owner's chances of realizing huge profits on his investment. * * * There have always been a small number of clever and unscrupulous property-owners who saw it was to their advantage to encourage local authorities to occupy themselves with municipal building, thereby diverting their attention from supervising private property in their district." (8)

In most cases it seems that the city has obliged itself to buy every square foot of land within the unsanitary area. But cases are recorded in which the municipality has retained a discriminating power in the demolition of slum property, only acquiring and dealing with those premises which it could purchase at reasonably fair prices. This was done in the Birmingham Improvement Scheme, 1875.

"I attach great importance to that power of selection," testified Joseph Chamberlain before the Housing Commission of 1884-1885. "It will be seen at once that one advantage of it was that it enabled us to buy land more cheaply. Our object was to buy land by voluntary agreement wherever we could without bringing into operation the compulsory clauses. We were encouraged by what had taken place in Glasgow to believe that that could be done to a considerable extent; and having a right of selection we were able if people made extortionate demands upon us, to put them aside and to say that we would not buy their property. We had the power of selecting about one-half of the whole area, and we could say to the owners, 'If you ask so high a figure we will pass you by and go to your neighbors,' and I have no doubt that that enabled us to buy upon much better terms. The condition of things in the case of the Metropolitan Board of Works, and of other local authorities, has been, I think, that where they have made a scheme embracing a particular area, they have laid themselves under an absolute obligation to purchase the whole of the area and have by so doing put themselves in the hands of the sellers who have been able to make unreasonable demands with the chance, at all events, that they could get the arbitrators and juries to support them. * * * There is a further advantage in the power of selection, namely, that we were enabled in a good number of cases to make arrangements with the private owners by which they undertook the improvement of their property, and we agreed that we would leave them in full possession of it. Generally,

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(7) W. Thompson, The Housing Handbook, 1903, p. 45.

(8) Practical Housing, p. 34.

I may say the effect has been that for the cost of a scheme with 43 acres we have really improved a district of 93 acres." (9)

The great burden of making unhealthy houses fit for habitation seems to have fallen upon the municipalities. The authorities have been a bit chary in requiring landlords to keep their premises in proper repair or to pay the penalty of having their buildings closed or demolished. In many instances, the owners are persons of very small means, often old people who have invested all their savings in unsanitary property, sometimes already very heavily mortgaged to secure outstanding debts. These persons would frequently find it impossible to raise the necessary money for repairs. As the enforcement of the law, under such circumstances, would have the appearance of persecution, and might be made the source of much political capital, the governing body has at times been persuaded to buy up such properties and to undertake the clearance or repairs itself.

Whether demolitions have really relieved overcrowding in congested districts is a question that is subject to the gravest doubt. The weight of authority leans to the conclusion that they have not. At first the law required that all persons of the working classes displaced should be rehoused on the very area dealt with. If the municipality treated the entire area at once, the persons dispossessed usually moved into neighboring buildings already filled to overcrowding. Thus, in attempting to raze plague spots, the local authorities have actually created others on the outskirts of those cleared. When the improvement has been completed, and new structures erected on the demolished area, the dishoused tenants have frequently not returned to their former homes, the increased rents of the new premises acting as a deterrent.

During more recent years, this evil has been greatly diminished. The municipality is now required to rehouse only so many of the dishoused persons as in the judgment of the Secretary of State cannot otherwise secure suitable accommodations. But his discretion is limited by the requirement that at least one-half of the dispossessed tenants must in every case be rehoused. The tendency of demolitions to increase overcrowding in the unhealthy district has also been lessened by giving the local authority the option to house a portion of those displaced outside the limits of the area to be razed. Piecemeal demolition, with simultaneous reconstruction, has been advantageously used in some cities, the tension on the housing accommodations in the neighborhood adjacent to the improvement scheme being thus considerably diminished. Glasgow and Birmingham, for example, in their great improvement schemes pursued the policy of not displacing more than 500 persons at a time, and of not disturbing these until adequate provision had been made for their rehousing.

The persons constituting " the working classes " are defined in a Stand-

(9) First Report of Royal Commission on Housing, 1884-5, Minutes of Evidence Q. 12, 372-3.

ing Order as "mechanics, artisans, laborers and others working for wages; hawkers, costermongers, persons not working for wages but working at one trade or handicraft without employing others, except members of their own family; and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of such persons who may be residing with them."(10)

In disposing of the cleared sites, considerable difficulty has been experienced in large schemes to obtain a recoupment at all approaching the expense incurred in their acquisition. As the slum demolitions undertaken are usually situated in central locations where land has a very high potential business value, the authorities are, as a rule, obliged to buy the properties at a price far in excess of their housing value. In London the conveyances at first restricted the use of the sites in perpetuity to working class dwellings, but since this policy proved very disastrous to recoupment, the period of this restriction has been reduced to ten years. Because of their position and also because of the severe housing laws, the cleared sites often possess a value for commercial purposes five or six times in excess of that for housing. Being unable to charge the whole of this cost against the rents received from the tenants, the local authorities generally write down the value of the land to its housing use. A large part of the cost is, therefore, immediately decapitalized and added to the local debt. Should the demand, however, for working class dwellings cease on sites so written down, the land reverts to its commercial value and covers any outstanding debt upon it. Some ratepayers, apprehensive as to the moral and sanitary benefits resulting from demolitions, having vigorously protested against this policy.

The first city to undertake slum demolition was Glasgow.(11) In 1866, the Glasgow Improvement Act—an act which afterwards became the pattern for the Cross' Act—constituted the city council a special improvement trust to undertake the first heroic clearance scheme. The unsanitary area comprised 88 acres in the very heart of the city and contained 51,000 persons, nearly one-eighth of the entire population. Two filthy streams which ran through the area were covered over. Thirty new streets were laid out, and twenty-six old ones widened. Twenty-three acres were thus devoted to additional streets alone. A large park was also plotted. With such vigor did Glasgow execute the scheme that within the first five years 19,000 people had been dishoused. The improvement did not demand the destruction of all buildings. The better ones were not torn down but thinned. "Wherever remodelling and rehabilitating of property could be accomplished," says Mr. Samuel Chisholm, sometime Lord Provost of Glasgow, "even though the result did not satisfy the ideas of the Committee as to the general comfort

(10) W. Thompson, The Housing Handbook, p. 41.

(11) Samuel Chisholm. The History and the Results of the Operation of the Glasgow Improvement Trust. Philosophical Society of Glasgow, 1895-6; also City of Liverpool Housing of the Working Classes Report of visit of the Deputation of the Housing Committee to Glasgow, Manchester, Salford and London, 1901.

or sanitary completeness provided, if it was an appreciable improvement on what had formerly existed, it was adopted, and the continuance of the rental was thus secured." Not until 1889 did the city begin to build dwellings on its own responsibility. The sites were acquired so slowly and at such low prices by private builders that the city was driven to this extremity as a last resort. The building policy of the scheme has been carried out on a strictly commercial basis. Where the land was considered most suitable for shops or business, appropriate buildings for such purposes have been erected and let at their full market value. On the principal streets, stores occupy the first floor with living apartments overhead. The purchase and improvement of lands and buildings involved a cost of $10,000,000. The new buildings constructed have involved a further expenditure of $2,000,000. Although property has been sold and feu duties created to the extent of $5,000,000, the city still holds premises valued at $4,400,000. The burden upon the rates was in all about $3,000,000. The income from the scheme was in 1906 some $527,000, and the expenses $517,000, the net surplus being consequently $10,000. The death rate for the City of Glasgow was in 1866, 30 per thousand; in 1906, 20 per thousand.

In 1875 Birmingham undertook a scheme embracing an area of 93 acres and a population of 16,596 persons.(12) Of this about 45 acres, containing 1,867 dwelling houses out of the total of 3,744, were purchased. The houses actually torn down numbered about 1,200. The remaining ones were repaired and put into a sanitary condition by demolishing buildings where too overcrowded, paving the yards and providing systems of sewage and water-supply. The council laid out a great thoroughfare, Corporation Street, through the unsanitary area. This was done for the twofold object of securing a complete current of air through the district and of lessening the cost of the scheme by enhancing the value of the sites after their clearance by bringing them into closer communication with the more valuable lands in the center of the city. The municipality has let the lots abutting on this street on 75-year leases, under the terms of which the substantial business blocks required to be erected by the lessees shall at the termination of that period become the property of the city. The total gross cost of the improvement was $6,720,000. This was reduced by a recoupment of $3,970,000 to a net cost of $2,750,000. From the property acquired for the scheme, the city is now drawing an annual rental in excess of $310,000. The death rate of the eight most unhealthy streets, which had averaged 53.2 per thousand for the three years prior to the commencement of the improvement, decreased to 21.3 per thousand after its completion.

Between 1876 and 1912 London cleared 97.22 acres in 35 schemes, displacing 45,437 persons. Of these, 44,891 were rehoused. The gross

(12) See Testimony of Joseph Chamberlain before Housing Commission, 1884-5; Arthur H. Davis, A Short History of the Birmingham Improvement Scheme, 1890; Municipal Year Book, 1910, p. 637.

cost of the operations, $16,769,580, was reduced by a recoupment of $4,616,375 to a net cost of $12,153,205.

In the earlier schemes the land was usually sold subject to rehousing obligations on the part of the purchasers. The 16 schemes, in which this policy was followed, displaced 22,872 persons and provided for the rehousing of 27,174 persons. The clearance of these 41.73 acres involved a gross cost of $8,349,995. This, however, was reduced by a recoupment of $1,755,300 to a net cost of $6,594,695.

In the later schemes a considerable part of the land has been retained and the municipality has done its own rehousing. This policy has been followed in 19 clearances involving an area of 55.49 acres. The gross cost of these clearances amounted to $8,419,585. The receipts from surplus lands and incidentals aggregated $2,036,970. The housing value of the land devoted to rehousing was $824,105. From the gross cost, therefore, a sum of $2,861,075 has to be deducted. This reduces the net cost of the clearances to $5,558,510. The buildings erected on these sites have cost $4,421,840.(13)

All these improvements resemble each other to a considerable extent. Leeds is at present clearing a slum of 75 acres in extent, Glasgow one of 25. Liverpool, Edinburgh, Manchester, Greenock, Swansea, Wolverhampton, Douglas, Sheffield, Southampton, Birkenhead, have all cleared large areas with the common experience that such undertakings are financially expensive, but socially of very great benefit as reflected by decreased death rates.

The sum of $23,226,000 was raised in loans for the housing of the working classes in English and Welsh cities outside of London between 1891 and 1905, inclusive. About half of this was spent on slum buying, and half in providing new dwellings. The greater part of this was spent in big clearances. Only $580,000 was borrowed for small schemes.

The amortization of debts incurred by the clearance of unsanitary areas has been largely influenced by questions of a social and political character. Ratepayers are more favorably inclined toward long loans than toward short ones. The former, involving a smaller annual repayment of the principal borrowed, are less burdensome upon the current rates. Holders of long leases in particular find short loans decidedly to their disadvantage. Any charge laid upon the rates that was not foreseen at the time when the lease was entered into, and consequently not taken into consideration in the bargaining incident to the letting of the premises, because of the English system of taxing rental instead of capital value, falls, of course, wholly upon the tenant. The proportional shares of such costs respectively borne by ratepayer and landlord vary inversely to the length of the loan. If the loan is liquidated before the expiration of the lease, there will be no new readjust-

(13) C. J. Stewart, The Housing Question in London. W. Thompson, The Housing Handbook. For table showing data for separate clearances see Appendix IC.

ment whatever as between rentals and rates. In that case the leaseholder is obliged to pay the entire cost of the clearance, the landlord not a single cent. Parliament has always assumed a very conservative attitude in regard to loans, exhibiting the greatest hesitancy in granting the necessary power to finance long ones and holding out inducements to encourage the issuance of short ones. When it has lent the credit of the State for these purposes it has generally accepted a lower rate of interest for short loans than for long ones. From the beginning the central government has desired to encumber posterity with as few debts as possible. The regulations hedging in the use of the national credit have, in fact, been so stringent that all but the smaller cities have found it expedient to borrow on their own securities.

Another point to be considered is the extent to which the amount of capital available for schemes may be increased so that larger clearances may be undertaken without imposing additional burdens upon the current rates. Thus if a two and a half per cent. loan repaid by cumulative annuity is extended from sixty to one hundred years, the annual charge on capital outlay is reduced more than a half per cent.

The subject also presents itself in the light of the effect which such a concession might have upon the rents charged the people rehoused. The reduction in rents resulting from the extension in the terms of loans would naturally vary in different schemes. In a minor London scheme it was estimated that by lengthening the term from sixty to one hundred years, rents might be reduced 7.8 per cent. This would result in rentals varying between 6s. and 10s. 6d. per tenement being lowered from 5½d. to 10d. per week respectively.

The general and local acts recognize three modes of repayment:

1. By annual installments of principal together with the interest on the sum remaining unpaid,—the installment system.

2. By equal installments of principal and interest combined,—the annuity system.

3. By setting apart and accumulating at compound interest a sinking fund.

The first method repays the principal by equal annual installments. It consequently involves a much smaller total outlay in respect of capital and interest than either of the other methods, although the burden in the earlier years is heavier. By adopting the installment system, a municipality shifts a minimum of the burden onto posterity. It is alleged, however, that, as a mere matter of bookkeeping, it cripples a scheme in its early years by compelling too high a charge for rents. The installment plan has probably been used more in Liverpool and Glasgow than elsewhere.

The annuity system is the one most commonly used. It consists of an equal annual charge for each year during the period of the loan, made up of varying proportions of principal and interest. Although the total amount of the two combined is always a constant sum, the payment in respect of

principal is subject to a progressive increase, and that of interest to a progressive decrease, with each succeeding year. In the earlier years of the period, the annual loan charges under the annuity system, as compared with the installment system, are, of course, considerably less, but this condition is not continuous. Before half of the term has elapsed the annual charges under the installment system, because of its larger repayments of principal at the start, have been so decreased that they are on a parity with those under the annuity system. The annuity system, it is true, eases the financial burdens of the present generation, but in the same degree that it achieves this, it also increases those of posterity. Viewing the question thus, and remembering that the grand total of the annual charges for interest incurred by the annuity system far exceeds those by the installment system, it is readily understood why Parliament favors the installment method.

The sinking fund and annuity methods involve identically the same annual charge in respect of principal and interest.

There seems at present to be a growing disinclination to undertake schemes of heroic size. Financially large clearances have proved extremely costly. In London, for instance, such operations have required an average expenditure of $163,000 for every acre cleared. Every person displaced has involved a cost of $390. Some authorities, Mr. Nettlefold, for example, seem to be thoroughly done with these slum demolitions.(14) They argue that far more good could be accomplished by operating under Part II of the Housing of the Working Classes Act, that is, on the principle laid down by the Torrens' Acts. To proceed along these lines, it is claimed, is far less expensive and much fairer because it puts the cost of repairing directly upon the property owner.

But in addition to the pecuniary dissatisfaction with large clearances, it has been felt for a long time that improvements of this nature are mere temporizing palliatives.

> "The demolition of slum property," says Mr. Dewsnup, "temporarily or permanently removes the slum from a certain number of square yards of lands but affords no guaranty that the extent or virulence of slumming will be permanently diminished. As has been pointed out, conditions may be such as to permit the re-establishment of slum conditions in localities hitherto free from the evil, or at any rate to enlarge the boundaries of the other slums. Hence, a distinction, not always realized by housing reformers, needs to be drawn between *slum property demolition* and *slum demolition.*" (15)

Land reformers have urged that what is really wanted is not so much slum demolition as slum prevention and that this can be accomplished only by changes in the system of taxation. Land which is essential to the free and healthy development of towns is at present being kept out of the market in order to enhance its value. This restriction on building causes congestion.

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(14) Practical Housing.

(15) Housing Problems in England, 1907, p. 233.

> "You have only to buy an ordinance survey map," said Mr. Lloyd-George in making his budget statement of 1909, "and put together the sheets which include some town of your acquaintance and the land in its immediate vicinity, and you will see at once what I mean. You will find, as a rule, your town or village huddled in one corner of the map, dwellings jammed together as near as the law of the land will permit with an occasional courtyard, into which the sunshine rarely creeps, but with nothing that would justify the title of 'garden.' For it is the interest of the landlord to pile together on the land every scrap of brick and mortar that the law will allow. And yet outside square miles of land unoccupied, or at least unbuilt upon; land in the towns seems to be let by the grain, as if it were radium. Not merely towns, but villages (and by villages and towns I mean the people who dwell in them) suffer extremely from the difficulty which is experienced in obtaining land, and by the niggardliness with which sites are measured out." (16)

In order to stimulate the erection of dwellings, proposals have been made favoring the exemption of improvements from all taxation, as in certain cities in Canada and Australia.

> "The effect of substituting a site-value rate for an ordinary rate," says the Minority Report of the Local Taxation Commission, 1901, "in a town will be, roughly speaking, to decrease the burden in the outskirts and increase it at the center. Now an increased burden will certainly not stop building at the center of a town—it will merely diminish the peculiar advantages of the central position, in other words, it will prevent the site-owner from obtaining so much rent. But a diminution in the burden in the outskirts may well tempt builders to build, and occupiers to live, in places where before it was not worth their while to go, and, of course, any increase of building on the ouskirts tends to reduce the pressure for accommodation all through the town; while the quality of the accommodations also is likely to be improved by the lightening of the burden on building value.
>
> "While the rating of site value thus concerns the public at large as an administrative reform, it is of special importance in connection with the urgent problem of providing house accommodations for the working classes. Anything which aggravates the appalling evils of overcrowding does not need to be condemned, and it seems clear to us that the present heavy rates on buildings would be diminished, and this would weigh with the builder who is hesitating to embark on the erection of new structures." (17)

Just what effect the application of this policy would have in the case of English cities, it is difficult to say. Whether the exemption of improvements

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(16) Hansard, Parliamentary Debates. Commons 1909, Vol. IV., Cols. 546-7.

(17) Separate Report on Urban Rating and Site Values, Local Taxation Commission 1901. Accounts and Papers, 1909, Vol. LXXI, p. 272.

from taxation and the heavier taxation of land values have diminished congestion in Canada and Australia is a very much debated question.(18)

Although the Housing Commission of 1885 recommended that unimproved lands be subjected to a special tax of four per cent. on the selling value, no step was taken in this direction until the Lloyd-George budget was passed in 1910. This imposes a tax of one half-penny for every pound on the site value of undeveloped land.

Another solution offered for overcrowding is that of land municipalization. Mr. E. Dwyer Gray, a member of the Housing Commission of 1885, ardently championed this reform.(19)

> " The evil," he said, " can never be effectually abated so long as owners of land in towns are permitted to levy a tax upon the whole community by way of an increase of rent proportionate to the increased value of that land, due not to any efforts of theirs, but to the industry and consequent prosperity of the community as a whole. This, in reality, is a constantly increasing tribute by the whole community of the town, to the individuals who own the land. There is no finality in it, and therefore increased prosperity brings no relief. The only thorough remedy is to enable the local authority in every town to acquire the fee-simple of its entire district compulsorily, and for this purpose the district should be so enlarged as to include the probable growth of the town for a considerable period. This proposition may appear extravagant, but in principle it is a mere extension of the provisions of Sir Richard Cross's Acts. Those acts enabled a sanitary authority to purchase an ' area ' compulsorily, and to take premises not in themselves in an unsanitary condition, if requisite to make the ' scheme ' complete. The principle of taking property compulsorily for the benefit of the working classes, even when the individual owner has been guilty of no default, is thus fully recognized. If it is just to take one man's property it is just to take many men's property under the same conditions if the public interest requires it. It is now simply proposed to make the ' area ' extend to the whole ' district ' for in no other way can the ' scheme ' be made really complete and of permanent benefit. The community represented by the local authority would then have the benefit of such future increase in the value of the land of the town as was due to its increased prosperity, caused either by the industry and enterprise of the community or by circumstances equally beyond its control, and that of the original fee-simple holders of the land. Such a change, while inflicting no injustice upon any individuals, provided a fair purchase price were paid, would in consequence of the future enhanced value of the land, eventually not only do away with the necessity of local taxation in towns but yield a constantly increasing surplus applicable to the benefit of the entire community."

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(18) See Accounts and Papers, 1909, Vol. LXXI, papers by T. A. Coghlan, Agent-General, N. S. W., p. 86. L. S. Spiller, First Commissioner Taxation, Sydney, N. S. W., p. 133. W. H. Hall, Acting Statistician, Sydney, N. S. W., p. 132. W. P. Reeves, Late High Commissioner of New Zealand, p. 78. P. Heyes, Commissioner of Taxes, Wellington, New Zealand, p. 136. Leslie Gordon Corrie, Brisbane, Queensland, p. 209-211. Luther S. Dickey, on Vancouver, Single Tax Review, June, 1911.

(19) First Report, 1884-5, pp. 67-68.

When clearance schemes were first commenced there was no intention permanently to municipalize the ownership of land. Land acquired in slum demolition was to be sold immediately upon the improvement's completion. Birmingham, it is true, from the very start determined to retain the fee-simple of the acquired land. This, according to Joseph Chamberlain, was done for two purposes; first, to avoid glutting the real estate market by throwing more land upon it than could be readily absorbed without diminishing land prices; and, secondly, to reserve the unearned increment for the municipality. Glasgow, after vainly trying to dispose of her slum property, was forced into a policy of municipal ownership. English cities, however, have never adopted an outright policy of land municipalization. But at present there is a strong feeling current in England that every inducement to acquire and hold land for both present and future needs should be given municipalities. In deference to this opinion, Parliament has finally been obliged to repeal the clauses requiring the sale of property acquired under the Housing Act.

The transportation question is, of course, most intimately related to housing. Transit conveniences of an inferior grade, or too dear for the working classes to afford, are in a very large measure the direct cause of congestion. English cities, recognizing this fact, have made provision for cheap workingmen's trains.

Taking a broad view of the problem, to resort to slum demolition as a means of rendering towns sanitary and fit for habitation is, unquestionably, only to put off the real solution of the housing problem. The adoption of this method as a permanent policy is tacitly to admit that there is no remedy at all for the evil,—to tear down unsanitary dwellings, and yet permit their reconstruction, is only to perpetuate the condition. Slum demolitions may better housing conditions for a day, and in England they have indisputably done so, but they do not touch the heart of the disease.

CHAPTER IV.

EXCESS CONDEMNATION IN THE UNITED STATES.

Excess condemnation is not of European but of American origin. England did not adopt it until 1845; France until 1850; Italy until 1865, and Belgium until 1867. New York adopted it in 1812.

NEW YORK.(1)

Excess condemnation is native to New York City.(2) It received its first legislative recognition in the street and park opening act of that city in 1812. This act (ch. 174, sec. 3) provided that it should be lawful for the commissioners of estimate and assessment, where part of a lot should be required for a street or park opening, to include the whole lot, or any part of its residue, in their estimate and assessment in the same manner as if it were required by the proceeding.(3) The fee simple of the residue of a lot included in the estimate and assessment and not required for the opening vested in the common council of the city upon confirmation of the commissioners' report by the supreme court. The city might either appropriate the residue in whole or in part to public uses, or sell it. In case a remnant was sold, the net proceeds derived from it after deducting the charges incidental to its sale and conveyance were to be credited by the city as part payment of the surplus, if there were any surplus, in the commissioners' estimate of the amount to be paid for damages over and above the amount of benefits to be assessed in the proceeding.

In exercising the power to sell surplus lands the common council adopted the principle that the owners of the adjoining lots had a preemptive right to the remnants at the price contained in the commissioners' estimate, and in the absence of such an estimate, then at a price fairly and equitably fixed by the street commissioner not to exceed the aggregate amount of damages. The practice, with very few exceptions, was to dispose of all gores in this manner. If the adjoining owner did not care to purchase an interest in a gore corresponding to the interests possessed by him in the lot immediately in the rear at this price, the city felt free to dispose of it to the highest bidder.

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(1) The paragraphs on excess condemnation in New York were prepared by the writer for the Committee on the City Plan, Board of Estimate and Apportionment. For the privilege of printing them here for the first time, the writer is indebted to the courtesy of Mr. Robert H. Whitten, the secretary of the committee.

(2) References: Documents, Board of Aldermen and Assistant Aldermen, Vol. I (1831-2), Doc. No. 13; Vol. II (1832-3), Doc. No. 80; Vol. III (1833-4), Doc. No. 32.

(3) For text of section bearing on excess condemnation, see Appendix II A.

The policy of the city was to dispose of these lands as soon as possible in order to liquidate the debt incurred by their purchase and not by retaining the remnants to delay further improvements. The receipt of the proceeds from an early sale was the only means of making effective the statutory provision making the proceeds a fund for the payment of the damages.

The power of excess condemnation was exercised by the city primarily for the purpose of securing a more economical replotting of the frontages adjacent to public improvements. Financial recompense was a mere incident. The pecuniary advantages accruing to the city were found primarily, not in the profits derived from the re-sale of surplus lands, but in the increase of the taxable values due to the consolidation of remnants into lots of such shape and size as to make possible the erection of wholesome and profitable buildings.

Excess condemnation was regarded not as a revenue measure, but as a means to secure desirable improvements in the city plan. It was not utilized to intercept the unearned increment arising as a consequence of public improvements but to reimburse the city for the funds spent in making them. To have gained financially by its exercise would have been considered as "taking advantage of individual necessity, brought on by action of law, to wring money from insulated persons for the public benefit." The upset price was, therefore, in each instance adjusted with the object of indemnifying the city for its original outlay, the interest charges on such outlay during the period intervening between the acquisition of the land and its disposal, and the incidental expenses incurred in its conveyance and sale.

No attempt has been made to compile an exhaustive list of the cases in which the power of excess condemnation was exercised. A cursory examination of the records, however, shows that the common council utilized it in the opening of the following streets: Third, Fourth, Sixth, Thirteenth and Fourteenth Streets, Seventh Avenue, Cedar Street, Lewis Street, Exchange Place, and Lafayette Place. All these openings occurred in the period between 1812 and 1834. The area of the twenty-four plots of known area taken as additional lands in these proceedings varied all the way from nine to 71,480 square feet. The majority of these plots, however, as shown below, had an area less than that of the ordinary lot:

Number of Plots Taken.	Area of Plots Taken—Square Feet.
9	1— 500
3	501— 1,000
2	1,001— 2,500
2	2,501— 5,000
3	5,001—10,000
3	10,001—15,000
2	15,001 and over.

The village of Brooklyn was granted the power of excess condemnation in 1833 (ch. 319, sec. 3).(4) The act provided that, where a residue of any lot necessary to be taken should be left by an improvement, the commissioners might, in cases where injury or injustice would otherwise be done include the whole lot, or such part of the lot as they might see fit, in their report. The commissioners were, however, required to obtain the written consent of the owner to such surplus takings. The value of the residue had also to be estimated separately from the part of the lot required for the improvement. The title of such residues, upon the confirmation of the report and the payment or tender of the amount at which they had been estimated to the owners, vested in fee simple in the president and trustees of the village. The act required the village to sell the remnants to the owners of the next adjacent lands for a price not less than the sum at which they had been estimated. If the next adjacent owners, upon reasonable notice, did not elect to purchase the remnants at this price, the village was privileged to sell them at public auction to the highest bidder. If the amount realized from the sale was less than the commissioners' estimate, the deficiency was deemed a part of the expense incident to the improvement. For the purpose of providing against such deficiencies, the commissioners included in their estimate and assessment the estimated value of the residues. Upon the sale of the residues, the proceeds were credited and allowed to each of the persons assessed in proportion to the amount of their respective assessments.

The act incorporating the City of Williamsburgh (Laws of 1851, ch. 91, sec. 8) contained a provision similar to that in Brooklyn.

It was not until 1834 that the constitutionality of excess condemnation came before the courts in the *Matter of Albany Street* (11 Wend., 149). In considering the extension of Albany Street through Trinity Churchyard, the city proposed taking the strip outside of the improvement between the street and the northern boundary of the cemetery. Trinity Church protested that the extension was not called for by public necessity and that the strip was not required for extending the street nor for any public purpose. The court held that there could be no objection to a statute giving the corporation power to take and dispose of surplus land subject to the owner's consent; without his consent, surplus land could not be taken. This decision was affirmed by the Court of Appeals in *Embury* v. *Connor* (3 N. Y. 511—1850).

The right to take surplus land over the owner's protest was lost to the city by these decisions. The right still left to the city, the right to take surplus land subject to the owner's consent, has seldom been exercised on account of the owner's reluctance to grant the necessary consent.

In view of the constitutional amendment adopted in 1913, it is expected that the right to take surplus land over the owner's protest will soon be

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(4) For text see Appendix II B.

restored to the city.(5) In 1914 the legislature passed an amendment to the Greater New York Charter permitting excess condemnation, which was vetoed by the Mayor. This amendment would have reconstituted the whole procedure in condemnation cases. The Mayor recorded his complete sympathy with the purpose of the amendment. Certain supposed defects in its drafting, however, caused his disapproval of the measure. The act, which was to take immediate effect, abolished the trial of condemnation proceedings by commissioners vesting it in courts without juries, but did not provide additional judges for this work. This, it was believed, would have imposed a serious burden upon the judges.

MASSACHUSETTS.

In recent years, excess condemnation has received more consideration in Massachusetts than in any other state. In 1903 the legislature appointed a committee on eminent domain which made an exhaustive study of the subject.

The bill drafted by this committee restricted excess takings to remnants, which on account of their shape or size, were unsuitable for buildings.(6) The power to take land in addition to the remnants, in order that appropriate building lots might be formed, was also granted, but only when the remnants could not be sold advantageously to the owners of adjoining hinterland. The policy outlined contemplated that the city should designate the adjoining property with which the public interest required each remnant to be united. In case the owner of such adjoining land refused to purchase the remnant at an appraised price, the city might then expropriate his property, provided some portion of it was within 50 feet of the improvement, for the purpose of uniting it to the remnant.

The act passed by the legislature in 1904 (Ch. 443) like the bill prepared by the committee, restricted excess takings to remnants too small or ill-shaped to be properly improved.(7) But the power to take sufficient land to form appropriate building lots was not granted. Adjoining lands with which the public interest required the remnants to be united might be designated but the act provided no effective instrument to secure the desired union. The owner of the adjoining hinterland stood in no fear of having his own property taken if he did not purchase the remnant.

The bill drafted by the committee empowered the owner of a plot of which a part was required to demand the taking of the whole parcel if the area of the residue did not exceed 1,000 square feet. The act passed by the legislature omitted this provision.

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(5) Since the above was written the Legislature has passed an amendment to the Charter permitting the City to exercise excess condemnation. For the text of this amendment see page 92.

(6) Mass. House Doc. No. 288, Leg. Sess. 1904.

(7) For text of act see Appendix II C.

The procedure outlined by the committee to safeguard property interests and the public from arbitrary or ill-considered takings was closely followed by the legislature. The act guaranteed both to taxpayers and to owners of excess lands proposed to be taken the right of judicial appeal. Appeals had to be taken to the superior court within 30 days after the filing of the plan.

On an appeal being taken, the court was to appoint a commission to enquire into the suitability of the remnants for the erection of appropriate buildings as well as into the public necessity and convenience of the excess taking. This commission was to hear the interested parties and report to the court within three months. The commission was allowed the fullest liberty in its examination. It could recommend changes in the proposed plan either by omitting remnants the taking of which had been asked for, or by adding remnants the taking of which had not been asked for. Estimates of the probable damages incurred by the taking of the remnants recommended and of the probable price that they might reasonably be expected to realize when re-sold were to be included in the commission's report.

The appeal was not to be heard by the court until the filing of this report. Notice of the report when filed was to be served on the owner of each remnant proposed to be taken. On hearing the appeal, the court could decree the taking of any excess lands recommended in either the original or the revised plan.

On account of its doubted constitutionality there was considerable hesitancy to utilize the statute. To clear itself on this point, the legislature in 1910 requested an advisory opinion from the justices of the supreme court as to the constitutionality of acquiring and reallotting the land on either side of a thoroughfare in parcels of suitable shape and size for development with a view to its subsequent sale or lease to private individuals.(8) The justices expressed the opinion that such takings bore no direct relation to the construction or use of the street for travel and would, therefore, be unconstitutional. To take property primarily either for profit or for the promotion of private interests by furnishing them better facilities for doing business would not be taking it for a public use. The taking of a remnant, which, on account of its shape and size, is of no practical value, the justices, on the other hand, considered on the "verge of constitutionality." The condemnation of such a remnant upon a finding by the commission that the public convenience and necessity demanded it, the justices intimated, would be found constitutional if the matter came before them in a judicial manner.

As the power to take remnants without the power to take sufficient land to form suitable building lots would have been of small use in planning improvements, the statute was never utilized. The state obviated all doubt

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(8) Opinion of the Justices, 204 Mass., 607, 616.

as to the constitutionality of this right by adopting a constitutional amendment in 1911.(9)

Since the adoption of this amendment only one city has obtained the legislative sanction necessary for its utilization. An act of 1912 (Ch. 186) authorized Worcester when it should widen Belmont Street, an outlying street on the direct route to Boston, to take part or all of the land on the widened side of the street, inclusive of the widening, to a breadth of 160 feet.(10) The street, which is to be widened 40 feet, to a width of 100 feet, is 2,890 feet in length. Owing to financial embarrassments, the city has not yet (December, 1914) availed itself of the authority granted by this act.

OHIO.

On the recommendation of the commission that suggested the civic center for Cleveland, Ohio, the legislature in 1904 passed an act (Annotated Statutes, ch. 2, p. 755) making it lawful for any city in the state to appropriate land neighboring parks, parkways and public reservations.(11) The main object of this act was to protect and preserve the environs, view, appearance, light, air, and usefulness of an improvement. All excess lands taken had to be sold subject to servitudes of this character. The Ohio act, which has never been used, served as a model for the acts passed by Connecticut and Pennsylvania in 1907; by Wisconsin in 1911 and by Oregon in 1913.

PENNSYLVANIA.

Pennsylvania, however, restricted excess takings to parks, parkways, and playgrounds.(12) Such lands, moreover, had to be situated within 200 feet of the improvement.

When Philadelphia attempted to utilize this act (No. 315, Laws 1907) in connection with Fairmount Parkway, it was declared unconstitutional by the supreme court of the state.(13) The court held that the constitutional provision permitting the appropriation of private property for public use contemplated an actual use by the public or the vesting of the right to such use in the public and not in private individuals. The fact that the public might derive benefit, utility or advantage from the taking of the land, did not, in the opinion of the court, constitute a public use within the meaning of the constitution.

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(9) For text of amendment see Appendix III A.
(10) For text of act see Appendix II D.
(11) For text of act see Appendix II E.
(12) For text of act see Appendix II F.
(13) Pa. Mutual Life Ins. Co. *v.* Philadelphia, 88 Atl., 904.

CONNECTICUT.

The Connecticut act (No. 61, Laws 1907) applies only to Hartford.(14) Although this act allows the greatest latitude in the taking of excess lands, Hartford has been most conservative in exercising its authority. On several occasions excess land in the form of gores fronting on street improvements have been taken, not with a view to financial profit, but for the purpose of simplifying the assessments. No attempt has been made to dispose of the land, it being permitted to remain a part of the street.

WISCONSIN.

The Wisconsin act (Ch. 486, Laws 1911) limited the application of excess condemnation to boulevards and parkways. The taking of excess land beyond 500 feet from the improvement was prohibited. No city has as yet availed itself of this act. The act was passed before the constitutional amendment granting excess condemnation was adopted in 1912.

OREGON.

The Oregon act (Ch. 269, Laws 1913) restricts the exercise of excess condemnation to parks and playgrounds. The surplus lands taken must be within 200 feet of the improvement.(15)

VIRGINIA.

By the act passed in Virginia in 1906 (Ch. 194), cities may acquire excess lands in the vicinity of parks or public reservations when it is used in such a manner as to impair their beauty, usefulness or efficiency. No city has taken advantage of this law.(16)

MARYLAND.

In 1908 the legislature of Maryland passed a special act (Ch. 166) enabling Baltimore to take excess land adjoining esplanades, boulevards, parkways, parks, and public reservations.(17) The purpose for which such takings might be made was defined in rather comprehensive terms. Any excess land might be taken that was in any manner deemed necessary to promote the public interest in the improvement, to protect or enhance its usefulness, or more fully to effectuate the purpose of its establishment.

These powers were incorporated by reference in an act (Ch. 110) passed in 1910 providing for the construction of a street over Jones Falls, known as "The Fallsway." The validity of the bonds issued under this act was attacked on the ground, among other things, that the act attempted to give the power of excess condemnation.(18) The court of appeals de-

(14) For text of act see Appendix II G.
(15) For text of act see Appendix II H.
(16) For text of act see Appendix II I.
(17) For text of act see Appendix II K.
(18) Bond *v.* Mayor and City Council of Baltimore, 116 Md. 683.

cided that the act did not give any power of excess condemnation. In the opinion of the court the act only granted the city the right to acquire such additional adjacent land as might be necessary for connections, cuts, fills, or parking, in other words, land incidental to the highway.

The act of 1908 being incorporated by reference in the act of 1910 would doubtless receive the same judicial construction.

CONSTITUTIONAL AMENDMENTS.

Four states, Massachusetts, New York, Ohio, and Wisconsin, have amended their constitutions so as to allow excess condemnation. The amendments of Massachusetts(19) and New York(20) are restricted in their scope. That of Massachusetts limits its application to streets; that of New York to streets and parks. The constitutional provisions of Ohio(21) and Wisconsin(22) are more comprehensive. In Ohio the exercise of excess condemnation is not restricted to any enumerated list of public improvements. It may be utilized in all improvements for which private property may be taken for public use. In Wisconsin the list of improvements enumerated by the amendment is very inclusive.

The amendments of both Massachusetts and New York, moreover, specify that the excess land taken may not be more than is necessary to form suitable building lots abutting on the improvement. Neither the Ohio nor the Wisconsin amendment contains such restrictions. In these states there is no direct limitation upon the area that may be expropriated, though in Ohio there is an indirect limitation which on occasion may greatly restrict excess takings. This limitation prohibits the bonds issued to pay for such land from being made a municipal liability or from being included in the limitation on the municipal bonded indebtedness. Bonds issued for this purpose are a lien only against the property so acquired. The constitutional amendment of Massachusetts makes it difficult to exercise excess condemnation, by requiring a special legislative act for each proceeding. Only such lands as are specified in this act may be taken.

New York held two constitutional referendums on excess condemnation. At the first in 1911 excess condemnation was defeated; at the second in 1913 it was adopted. The first proposal, which attempted a much broader and more comprehensive amendment than the second, provided that a municipal corporation, in taking private property for public use, might take additional, adjoining, or neighboring property subject to conditions prescribed by general legislative act. Property thus taken was to be deemed taken for a public use. The amendment limited neither the amount, the location nor the purpose of excess takings.

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(19) For text of amendment see Appendix III A.
(20) For text of amendment see Appendix III B.
(21) For text of amendment see Appendix III C.
(22) For text of amendment see Appendix III D.

A constitutional amendment contemplating excess condemnation in California was defeated in 1914. A referendum was held the same year in Wisconsin on a proposal to extend the power of excess condemnation beyond the limits contemplated by the amendment adopted in 1912. This amendment was, however, rejected. Both of these rejected amendments were similar to the one rejected in New York in 1911.(23)

(23) For a discussion of the constitutional aspects of excess condemnation see John DeWitt Warner, Report on Scope and Limits of Expropriation "Incidental" *vs.* "Excess" Condemnation (1912) Dept. Docks and Ferries, N. Y. C., Doc. No. 19; Walter L. Fisher, Legal Aspects of the Plan of Chicago, Plan of Chicago, prepared by the Commercial Club (1909) pp. 139-151.

CHAPTER V.

CONCLUSIONS OF THE COMMITTEE ON EXCESS CONDEMNATION, NATIONAL MUNICIPAL LEAGUE, MAY 24, 1912. (1)

A city is entitled to powers which will enable it to secure the fullest use of city land and the greatest possible freedom in adjusting its streets, parks and transit systems to the needs of city life.

From time immemorial English common and statute law has recognized that government would be paralyzed if public necessity and convenience were not paramount to private ownership and enjoyment of land.

In built-up portions of modern cities necessary street adjustments cannot be made without leaving much of the abutting property in unusable or unsuitable form.

The scattered private ownership of such parcels long retards proper development along the improvements, and represents an economic drag on the whole city.

It also often involves hardship on the private owner assessed for a benefit which has actually been a detriment to him and destined to wait many years before the owner of contiguous usable land will acquire at his own price and unite with it the otherwise unusable remnant.

For a city to spend thousands or millions of dollars in the creation of parks, boulevards and public places and then to permit the destruction of the beauty it has created by idiosyncrasies of abutting property owners is a waste of public moneys.

The only thoroughly effective instrument for protecting such public investments and for correlating city land into its most usable forms is the power of excess condemnation vested in city governments.

Whatever recoupment may be received from the re-sale of property so acquired is but an incident in the exercise of this power for public purposes.

Even though there be no recoupment, there is a substantial financial advantage in the ability to acquire whole parcels and thus escape the payment of damages for the destruction of the usability of a parcel.

Wherever the highest courts of a state have broadly interpreted what constitutes a public use, the power of excess condemnation can probably be acquired by more legislative enactment. In some states where courts have been particularly broad-minded, cities may secure such power by merely undertaking the condemnation of adjacent property and carrying suits against such taking to the highest courts.

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(1) Reprinted from The National Municipal Review, Vol. II, pp. 24-25 (January, 1913). The committee consisted of Robert S. Binkerd, Chairman, Lawson Purdy, Edward M. Bassett, Nelson P. Lewis, and Herbert S. Swan.

In most states, however, where the courts have given narrow interpretation to what constitutes a public use, the safest plan of procedure is by amendment of the state constitution. The Supreme Court of the United States in several important cases has fairly clearly indicated that such constitutional enactments would not be declared void under the constitution of the United States.

With the widened scope of condemnation and its increased use for social purposes, the method of condemnation becomes of very great importance. Movements to secure the grant of excess condemnation ought also to attempt the correction of abuses in existing condemnation methods or to secure a simpler, more direct and less dilatory and expensive method.

Appendix I.

A. The Probable Financial Advantage of Excess Condemnation had it been Exercised in the Widening of Livingston Street, Brooklyn.

The statement shows by lots, for every lot fronting on the Southwest side of Livingston street, the amount of the award, the assessment of buildings for 1905 just prior to the taking, the excess of the award over the building assessment, the assessed value of land for 1905 and the assessed value of land for 1911. (1)

1	167	12	85	11,206 91	2,400	8,806 91	2,400	15,000	
1	167	13	86	11,763 70	3,300	8,463 70	2,400	15,000	
1	167	14	87	11,206 91	2,400	8,806 91	2,400	15,000	
1	167	15	88	11,262 20	3,600	7,662 20	2,400	15,000	
1	167	16	89	296,009 30					
1	167	16	89A	1,012 33					
1	167	16	89B	1,771 58	75,000	225,666 02	90,000	180,000	
1	167	16	89C	1,518 50					
1	167	16	89D	354 31					
1	269	12	9	65,801 67	25,000	40,801 67	15,000	51,700	Lot 9 for 1911.
1	269	27	1	19,864 00	9,000	10,864 00	21,000	29,400	
1	269	28	2	42,228 47	4,000	38,228 47	15,000	.....	In Livingston St., 1906.
1	269	30	3	13,916 55	3,400	10,516 55	5,400	13,000	
1	269	31	4	12,149 39	2,500	9,649 39	5,000	12,000	
1	269	32	5	9,617 17	5,400	4,217 17	3,200	7,700	
1	269	33	6	13,781 53	10,000	3,781 53	6,000	12,300	
1	269	35	7	10,310 61	4,100	6,210 61	4,200	10,300	
1	269	36	8	12,291 75	5,300	6,991 75	4,200	10,500	
1	269	40	10	11,513 09	4,800	6,713 09	4,600	15,000	
1	269	41	11	7,438 22	400	7,038 22	4,600	12,000	
1	269	42	12	43,121 35	9,800	33,321 35	9,200	28,800	
1	269	44	13	11,143 66	3,800	7,343 66	4,600	12,200	
1	269	45	14	6,590 30	3,400	3,190 30	3,600	5,000	
1	269	46	15	7,368 77	2,900	4,468 77	3,600	13,550	
1	269	47	16	8,280 89	3,200	5,080 89	3,400		
1	269	48	17	6,914 24	2,600	4,314 24	3,400	5,640	Merged in 49, 1911.
1	269	49	18	18,315 13	5,500	12,815 13	5,500		
				$1,989,890 27	$619,550	$1,370,340 27	$649,150	$2,073,190	

(1) The writer is indebted to the courtesy of Mr. Lawson Purdy, President, Department of Taxes and Assessments, for this statement. The value of plots fronting on both Livingston and Schermerhorn streets has been apportioned.

* Total lots, 1905.

APPENDIX I.

B. THE FINANCIAL RESULTS OF RECOUPMENT IN LONDON.

I. IMPROVEMENTS EFFECTED BY THE METROPOLITAN BOARD OF WORKS, 1855-1889. (1).

A. Thoroughfares Widened.

Improvement.	Gross Cost.	Re-coupment.	Net Cost.	% Re-coupment to Gross Cost.
Holborn (Middle Row).....	£77,106	£691	£76,415	0.8
Kensington (High Street).....	186,954	60,520	126,434	32.
Park Lane (Hamilton Place).....	144,424	33,456	110,968	23.
Wapping (High Street).....	253,720	37,186	216,533	14.
Shoreditch (High Street).....	211,703	89,887	121,816	42.
Old Street to Oxford Street, Clerkenwell Road and Theobalds Road....	1,121,004	286,338	836,666	25.
Harrow Road	190,139	62,380	127,759	36.
Newington Butts.....	15,336	1,566	13,770	10.
Coventry Street.....	186,326	85,880	100,446	46.
Gray's Road, including Elm Street....	475,035	84,421	390,614	17.
Kentish Town Road.....	120,678	26,695	93,983	22.
Islington St. (The "Angel").....	35,160	10,359	24,801	29.
Mare Street, Hackney.....	60,002	24,340	35,662	40.
Tooley Street, between Bermondsey and Dockhead Streets.....	453,197	77,108	376,089	17.
Jamaica Road and Union Road.....	88,751	17,578	71,173	19.
Camberwell & Peckham.....	565,691	155,226	410,465	27.
Deptford Bridge approaches.....	134,487	26,889	107,598	19.
Tooley Street, between Bermondsey Street and Dean Street.....	75,906	45,388	30,518	59.
Upper Street, Islington.....	253,938	54,643	199,295	21.
Green Street, Bethnal Green.....	66,714	11,832	54,882	17.
Tower Hill.....	80,800	365	80,435	0.45
Hammersmith (King Street).....	55,364	12,480	42,884	22.
Star Corner, Bermondsey.....	112,112	7,033	105,079	6.
Walworth Road	76,989	12,158	64,831	15.
Stingo Lane, Marylebone.....	95,815	21,216	74,599	22.
Hampstead (High Street).....	137,813	38,223	99,590	27.
Total.....	£5,275,164	£1,281,858	£3,993,306	24.2
Changing £ into $ (at $5 per £)....	$26,375,820	$6,409,290	$19,966,530	

(1) George Laurence Gomme, Royal Commission on London Traffic, 1906, vol. 3, pp. 108-110.

B. New Thoroughfares Constructed.

Improvement.	Gross Cost.	Re-coupment.	Net Cost.	% Re-coupment to Gross Cost.
Convent Garden Approach (Garrick Street)	£123,212	£89,072	£34,140	72.
Southwark Street	584,930	218,860	366,070	37.
Victoria Park approach (Burdett Road)	48,149	9,945	38,204	20.
Mansion House (Queen Victoria Street)	2,300,520	1,224,233	1,076,287	53.
Whitechapel (Commercial Road)	244,495	42,270	202,225	17.
Bethnal Green Road	295,182	98,673	196,509	33.
Willow Walk, Great Eastern Street	455,002	178,990	276,012	39.
Charing Cross and Victoria Embankment approach (Northumberland Avenue)	711,491	831,310	119,819	116.
Piccadilly to Bloomsbury (Shaftesbury Avenue)	1,136,456	377,569	surplus 758,887	33.
Charing Cross to Tottenham Court Road (Charing Cross Road)	778,238	180,739	597,499	23.
Southwark Bridge Road (Marshalsea Road)	149,515	17,413	132,102	11.
South Lambert Road (between Wilcox Road and Walton Terrace)	22,704	7,755	14,949	34.
Kentish Town Road to Great College Street (Clarence Road)	8,074	3,500	4,574	43.
Sun Street to Worship Street (Appold Street)	143,518	62,799	80,719	43.
Poplar (Cotton Street)	18,401	899	17,502	4.
Victory Place, Newington	3,566	446	3,120	12.
Total	£7,023,453	£3,344,473	£3,798.799	47.
Surplus	.....	.....	119,819	
	.....	.....	£3.678.980	
Changing £ into $	$35,117,265	$16,722,365	$18,394,900	

C. Thames Embankments.

Improvement.	Gross Cost.	Re-coupment.	Net Cost.	% Re-coupment to Gross Cost.
Victoria embankment	£1,558,129	£401,148	£1,156,981	25.
Albert embankment	1,153,862	139,337	1,014,525	12.
Chelsea embankment	348,881	79,290	269,591	22.
Total	£3,060,872	£619,775	£2,441,097	20.
Changing £ into $	$15,304,360	$3,098,875	$12,205,485	
Grand Total	$76,797,445	$26,230,530	$50,566,915	34.

1.	Fortress road	
2.	Evelyn street	
3.	Sandys row to Bishopsgates.....	
4.	Ben Johnson road.....	
5.	Blockstock road	
6.	Holloway road	
7.	Old street at Goswell road.....	
8.	Tower Bridge southern approach (Towe road)	
9.	Long lane	
10.	Wandsworth road	
11.	Battersea Park road.....	
12.	York road	
13.	Albert embankment	
14.	Holborn to Strand (Kingsway and Ald	
15.	Clare Market clearance scheme.....	
16.	High Holborn, Nos. 107-113.....	
17.	Southampton row between High Holb Theobald's road	
18.	Tower Bridge northern approach (To to Prescot street).....	
19.	Mansell street (continuation of the approach to the Tower Bridge)...	
20.	Nine Elms lane.....	
21.	Lewisham High road, Loampit Hill, Vale, Lee High road.....	
22.	Bostall Hill, Basildon road, McLoed r Knee Hill	
23.	High street and Lewisham road.....	
24.	South Lambeth road, near Vauxhall Pa	
25.	Fulham Palace road, High street, and street	
26.	Coldharbour lane to Norwood road....	
27.	Lea Bridge road at Lower Clapton road	
28.	Essex road	
29.	Camberwell New road.....	
30.	Malpas road, Brockley Rise, Brockley r Stanstead road	
31.	Catford Bridge	
32.	Battersea Bridge road and Battersea Pa	
33.	Parker's row, Jamaica road, Union road street, Blackhorse Bridge, Deptfor Bridge, Bridge street and Church st	
34.	High street and Highgate Hill.....	
35.	Woolwich road	
36.	Belvedere road	
37.	Putney Bridge road.....	
38.	Norwood road to Effra road.....	
39.	Queens road, Deptford.....	
40.	Southgate road and Green lanes.....	
41.	Dalston lane and Graham road.....	
42.	Stanstead road to Catford road.....	
43.	Mare street and Upper Clapton road..	
44.	East India Dock road.....	
45.	Norton Folgate	
	Grand Total	
	Changing £ into $	

(2) Royal Commission on London Tra
143; 1909, pp. 187-189; 1910, pp. 162-164; 191

(a) In some instances the cost has be
clearances. The recoupment, too, in certain

APPENDIX

C. FINANCIAL RESULTS OF

1. Table Giving Insanitary Areas Cleared by the Metropolitan Board of Works

Name of Scheme.	Date.	Area.	Gross Cost of Clearance.
		Acres.	£
Whitechapel and Limehouse	1876	5.14	187,558
Goulston Street and Flower and Dean Street, Whitechapel	1877	7.21	371,607
St. George-the-Martyr, Southwark	1877	2.09	66,786
Bedfordbury, St. Martin-in-the-Fields	1877	1.02	87,212
Great Wild Street, St. Giles-in-the-Fields	1877	1.65	124,278
Pear Tree Court, Clerkenwell	1877	0.82	27,427
Whitecross Street, St. Luke's	1877	7.11	391,303
High Street, Islington	1877	1.02	44,776
Old Pye Street, Westminster	1877	2.46	79,389
Bowman's Buildings, St. Marylebone	1878	1.79	52,348
Essex Road, Islington	1878	5.03	115,108
Little Coram Street, St. Giles(b)	1879	1.44	14,359
Wells Street, Poplar	1879	3.48	75,771
Great Peter Street, Westminster(b)	1879	0.34	235
Windmill Row, Lambeth	1883	0.54	13,212
Tabard Street, Newington	1884	0.59	18,630
Totals		41.73	1,669,999
Changing £ into $ at $5 per £			8,349,995

(1) Royal Commission on London Traffic III, Appendix No. 6, Statement G, p. 234.

(a) Old Pye Street—Accommodation for a small number of these persons was

(b) Little Coram Street and Great Peter Street.—In these two instances the for re-housing, the cost of street improvements only being borne by the Metropolitan

(c) Some additional accommodation for persons of the working class was pro- the following schemes: Goulston Street and Flower and Dean Street. Bedfordbury.

I.

CLEARANCES IN LONDON.

and Re-housing Sites, Sold Subject to Obligation on Purchasers to Re-house.(1)

Receipts From Sale of Site, and Incidental.				Number of Persons of Working Class.	
Sold for Commercial Purposes (Including Incidental Receipts).	Sold With Obligation to Re-house.	Total.	Net Cost Falling on the Rates.	Displaced (Actual).	Re-housed on Site Assigned For Re-housing (on Basis of Two Per Room).
£	£	£	£		
10,895	24,900	35,795	151,763	3,669	3,600
60,010	32,106	92,116	279,491	4,004	3,972
2,042	12,300	14,342	52,444	1,266	2,002
3,815	7,886	11,701	75,511	867	724
2,788	15,840	18,628	105,650	1,913	1,616
632	5,925	6,557	20,870	410	596
39,478	36,882	76,360	314,943	3,687	3,756
939	5,650	6,589	38,187	547	798
9,083	20,410	29,493	49,896	1,375	1,722(a)
5,890	10,000	15,890	36,458	806	1,570
3,904	13,306	17,210	97,898	1,796	3,422
871	.....	871	13,488	645	900
6,652	5,000	11,652	64,119	1,029	1,392
23	.....	23	212	179	416
383	3,050	3,433	9,779	459	400
6,200	4,200	10,400	8,230	220	288
153,605	197,455	351,060	1,318,939	22,872	27,174(c)
768,025	887,275	1,755,030	6,594,695		

provided on a portion of the cleared site, sold free from re-housing obligations.

clearance was carried out at the expense of the Peabody Trustees, who used the site Board of Works.

vided on the portion of the cleared site, sold free from re-housing obligations in Whitecross Street. Old Pye Street. Essex Road. Wells Street. Tabard Street.

:Retained by the Council up to the 31st March, 1912.

of d- s.	*Re-housing.* Total.	Average Cost per Room Provided.	Gross Annual Income from Dwellings, Lodging Houses, Shops, etc.	Actual Receipts 1911 to 1912.	Average Rent per Room in Dwellings.	Number of Persons of the Working Class Re-housed (on the Basis of 2 Persons per Room in Dwellings and One Person per Cubicle in Lodging Houses).
£	£	£	£	£	s. d.	
...	.....	.....	.....	.....	.....	.....
314	17,114	111.1	1,014	958	2 6½	308
298	13,298	86.9	876	794	2 2½	306
56	39,476	118.5	2,045	1,452	2 4¼	666
93	41,253	103.7	2,955	2,921	2 10¼	798
52	51,302	150.6	4,823	4,734	3 5¾	629(g)
55	345,665	119.1	26,471	26,321	3 0½	5,524
18	3,768	125.6	289	281	3 8½	60
90	63,190	84.1	8,173	4,760	2 6	947(h)
12	26,072	82.8	2,129	1,901	2 7¼	630
21	44,121	130.2	2,993	2,902	3 4¼	679
27	47,677	114.6	3,894	3,869	3 7¼	832
34	121,641	106.4	9,514	9,469	3 2½	2,286
13	12,847	95.5	822	550	2 4¼	269
...	.....	.....	.....	.....	.....	.....
88	68,588	95.9	5,314	4,971	2 11¼	1,216
56	98,926	95.2	6,924	6,547	3 3	1,424
41	52,791	81.0	4,906	4,606	3 1¼	1,143(i)
...	.....	.....	.....	.....	.....	(j)
68	1,047,729	107.6	83,142	77,036	.....	17,717
40	5,238,645	538.0	415,710	385,180	.....	.....

'p. 161; 1911, p. 157; 1912, p. 130; 1913, p. 111.
arden Row, Aylesbury Place, Webber Row,

f the table.
400, and Falcon Court, £7,750.
of the property.

APPENDIX II.

ACTS ON EXCESS CONDEMNATION IN THE UNITED STATES.

A. LAWS OF NEW YORK 1812, CHAPTER 174.(1)

Section 3. *And be it further enacted,* That it shall be lawful for the said commissioners, so to be appointed by the court aforesaid, for any of the purposes aforesaid, in all cases where part only of any lot or lots, or parcel or parcels of land, or of any other tenements, hereditaments or premises, shall be required for any of the aforesaid purposes, leaving a residue of such lot or lots, or parcel or parcels of land, or other premises belonging to the same owner or owners, or parties in interest, to whom the said part thereof, so required for such purpose, shall belong; and they, the said commissioners, shall deem it expedient and proper so to do, to include and comprise, in their said estimate and assessment, the whole or any part of such said residue of such lot or lots, or parcel or parcels of land, or other premises along with the part of the same so required for the said purpose of the said intended operation and improvement, in like manner as if the said residue, or the part thereof so to be included in the said estimate and assessment, was required for the purpose of making the said operation and improvement so to be made; and all the said part and residue of the said lot or lots, or parcel or parcels of land, or other premises, so included in the said estimate and assessment, and not required for the purpose of making such said operation and improvement, shall, on the confirmation by the said court of the said report of the commissioners of such further report as may be made in the premises, become and be vested in the said mayor, aldermen and commonalty, of the city of New York, and their successors, in fee simple, who may appropriate the same, or any part thereof, to public uses, and shall and may sell and dispose of the residue thereof, or the whole, in case of no appropriation of any part thereof, for public uses: *Provided,*

4. *And be it further enacted,* That in case of the sale of the same, or any part thereof, the net money and proceeds arising and to be received therefrom, after deducting and paying the charges of such sale, and the proceedings and conveyance consequent thereon, shall be credited and allowed by the said mayor, aldermen and commonalty, towards and as part payment of the surplus, if any surplus there shall be, as the amount of the sums estimated and reported to be paid for damages by and in consequence of the making the said operation and improvement, in the said report mentioned, over and above the amount of the sums or assessments assessed and reported to be paid for the benefit and advantage thereof, to those who may be deemed to be benefitted thereby.

(1) New York exercised excess condemnation under this act until 1834, when it was declared unconstitutional in *Matter of Albany Street,* 11 Wend., 149.

B. Laws of New York 1833, Chapter 319.(1)

Section 3. When a residue shall be left of any lot or lots necessary to be taken for such improvement, the said commissioners may, in cases where injury or injustice would otherwise be done, and with the consent in writing of the owner or owners of such lot or lots, include the whole or any part of such residue in their report (briefly describing the same), and estimate separately the value thereof. Every such residue, or part of a residue which shall be so included, shall, upon the confirmation of the said report as hereinafter provided, and the payment or tender of the amount at which the same shall be so estimated to the owner or owners thereof, vest in fee simple in the president and trustees of the village of Brooklyn, who shall thereupon sell and dispose of the same, at a price or prices not less than the sum at which it shall have been so estimated to the owner or owners of the next adjacent lands; and if he or they shall not, upon reasonable notice (to be determined by the president and trustees of the said village), elect to take the same at such price or prices, it shall be sold and disposed of at public auction, upon such notice as the president and trustees shall deem proper, for the best price or prices that can be obtained for the same. In case the same shall sell for a sum less than that at which its value was estimated by the commissioners, the deficiency shall be deemed a part of the general amount of loss and expenses arising from the improvement. And for the purpose of providing for the event of such a deficiency, and for the payment of the amount thereof, the commissioners shall include in the estimate and assessment of the expenses of such improvement, the estimated value of any such residue or part of a residue, which may be included as aforesaid in their report; and upon the sale of the same, as above provided, the proceeds thereof shall be credited and allowed to each of the persons assessed, in proportion to the amount of the respective assessments against them.

C. Acts of Massachusetts 1904, Chapter 443.(1).

Section 2. The Commonwealth, or any city in the Commonwealth so far as the territory within its limits is concerned, may in the manner hereinafter set forth, take in fee by right of eminent domain the whole of any estate, part of which is actually required for the laying out, alteration or location by it of any public work, if the remnant left after taking such part would from its size or shape be unsuited for the erection of suitable and appropriate buildings, and if public convenience and necessity require such taking.

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(1) Whether this Act was ever utilized is unknown.

(1) On account of its doubted constitutionality this act was never utilized. To overcome this condition a constitutional amendment was adopted in 1911. By the terms of this amendment excess condemnation may be exercised subject to special legislative act.

Section 3. Where the Commonwealth or a city proposes to take land as above provided there shall be a public hearing in any case where the Commonwealth or the city is required by any law in force at the time to have such a hearing before taking land for a public work of the same nature as that with regard to which it is proposed to take land under this act, and such notice of the hearing shall be given as is required by such law. If, after such hearing, the Commonwealth or city determines that a taking should be made it shall proceed to carry out the taking in accordance with the provisions of this act, and its so doing shall be an adjudication that the taking of the land for the public work is required by public necessity and convenience and also, subject to the right of appeal given by section six, that the remnants outside the boundaries of the proposed public work are unsuited for the erection of suitable and appropriate buildings, and that public necessity and convenience require their taking. In case no law in force at the time requires a hearing to be given as aforesaid, the filing by the Commonwealth or by the city of a plan and memorandum as provided in section five shall be adjudication to the same effect.

Section 4. When a taking is to be made either after a hearing or without a hearing, if no hearing is required under the provisions of the last section, the Commonwealth or the city, as the case may be, shall cause to be prepared a plan and a memorandum referring to said plan showing:

(1) The land intended to be taken for the proposed public work, and the dimensions and area of each parcel included therein.

(2) The land which it is desired to take outside the boundaries of the proposed public work, and the dimensions and area of each parcel thereof.

(3) The owner of each parcel which it is desired to take, the buildings or other structures upon the same, and the grade of such parcels and of the proposed public work.

Section 5. The Commonwealth or the city shall file such plan and memorandum (which last shall also be recorded and indexed) in the registry of deeds for the district wherein the land is situated; and shall within seven days of said filing cause notice of its intention to take such land to be served on each owner of a parcel which it is proposed to take, by posting the notice in a conspicuous place on such parcel and by publishing the same once in each of two successive weeks in a daily newspaper, if there be any, published in the city in which such parcel lies, otherwise in a newspaper published in the county in which such parcel lies, and also by mailing such notice to every such owner whose address is known, by registered letter; and no damages shall be assessed for any building erected on said land subsequent to such filing, or for any subsequent alterations or additions to any building.

Section 6. The owner of any land of which it is proposed to take any part which lies outside the boundaries of the public work may within thirty days after the date of such filing appeal to the superior court for the county in which said land is situated, from so much of the order under which said

taking is made as relates to land outside said boundaries; and on such appeal the court shall appoint a commission of one member or three members to examine and report to the court as to whether such remnants or any of them are unsuited for the erection of suitable and appropriate buildings, and as to the public necessity and convenience of the proposed taking outside said boundaries.

Section 7. The commission appointed pursuant to the preceding section shall hear the parties in interest, shall give such notice of the time and place of its hearings as the court may have directed in the order appointing it, and shall report to the court within three months after its appointment. It may in its report recommend changes in the proposed plan by omitting any remnants the taking of which may have been asked for, or by adding any remnants the taking of which may not have been asked for, or otherwise in respect to so much of the proposed taking as is outside the boundaries of the public work. The commission shall submit with its report an estimate of the total damages to be paid for land taken outside said boundaries, in case a taking is made beyond said boundaries to such extent as it may recommend, and of the sum the Commonwealth or city may reasonably expect to realize by the resale of the parcels taken beyond such boundaries. The commission may, with the approval of the court, employ experts to advise it on technical questions and on questions relating to the value of estates.

Section 8. On the filing of the report of the commission, the court shall order notice thereof to be given to each owner of a parcel of land proposed to be taken outside the boundaries of the public work, in such manner as it may determine, and at any time after the date set by said notice the court may proceed to a hearing on the appeal, and after such hearing may decree the taking of such parcels of land without said boundaries as it may determine, but shall not decree the taking of any such land unless the taking thereof be shown on the plan originally filed or be recommended by the report of the commission appointed under section six. The decree of the court, if it orders any land to be taken, shall be accompanied by a plan therein referred to approved by the court and showing the taking decreed.

Section 9. The court may in its discretion at any time before the expiration of the thirty days allowed for appeal in section six, permit not less than ten taxpayers of the Commonwealth, if a taking under this act is made by the Commonwealth, or not less than ten taxpayers of the city in which the land is situated, if the taking is made by a city, to appeal from so much of the order under which said taking is made as relates to land outside the boundaries of the public work, or may at any time while an appeal taken by an owner under section six is pending, permit such taxpayers to appear and be heard by counsel and to present evidence and examine witnesses before the commission and the court in relation to such appeal.

Section 10. A certified copy of the decree, and if any land is to be taken, of the accompanying plan, shall, within fourteen days after the

making of the decree, be filed in the registry of deeds for the district within which the land in question is situated, and the decree shall be recorded and indexed. When the decree ordering a taking is so filed it shall constitute a taking of the land decreed to be taken.

Section 11. The Commonwealth or the city shall not take possession of the land proposed to be taken outside the boundaries of the public work, nor enter thereon except for the purpose of preliminary examinations and surveys, in any event until the thirty days allowed by section six for an appeal have expired; and, if such an appeal is taken, until the making of a decree by the court as provided in section eight and filing thereof as provided in section ten.

Section 12. In any case where the Commonwealth or the city is required by any law in force at the time to award damages for land taken or proposed to be taken for a public work of the same nature as that with regard to which it is proposed to take land under this act, no plan or memorandum shall be filed under the provisions of section five unless and until damages have been so awarded; and the provisions of such law shall apply to the making of such award. In awarding damages as aforesaid the Commonwealth or the city shall make separate awards for different parts of the same parcel proposed to be taken and respectively within and outside the boundaries of the proposed public work.

Section 13. Damages for land taken pursuant to this act shall be assessed and recovered as in the case of land taken for highways; and any owner part of whose land is taken may, with regard to any other part of his land outside of the boundaries of the public work which was proposed to be taken and which is not taken, recover damages sustained by reason of preliminary surveys and examinations and damages for deprivation of the use of land as provided in section five, in the same proceeding in which he recovers damages for said part of his land taken.

Section 14. Any laws at the time in force providing for raising or obtaining money to pay for land taken for a public work of the same nature as that for which land is taken or purchased under the provisions of this act shall apply with regard to raising or obtaining money to pay damages awarded or recovered under the provisions of sections twelve and thirteen or for land purchased under the provisions of section nineteen.

Section 15. The Commonwealth or the city, as the case may be, shall determine within six months after the completion of any public work for which land is taken under this act, or within six months after the filing of a final decree or an appeal taken under this act, whichever shall happen later, with which of the adjoining properties the public interests require that each parcel of land, if any, taken outside the boundaries of the public work should be united; and shall, within said six months, notify the owner by registered letter mailed to such owner, and shall annex to the notice a copy of this section.

Section 16. If such owner or some person on his behalf shall within two weeks from the mailing of such notice notify in writing the Commonwealth or the city that such owner wishes for an appraisal of such parcel, the Commonwealth or the city shall cause such parcel to be appraised by three competent and disinterested persons, one of whom shall be appointed by the Commonwealth or the city, one by said owner and one by the superior court for the county; provided, however, that the Commonwealth or the city and said owner may in writing appoint a sole appraiser. Said appraiser or appraisers shall forthwith after his or their appointment view the property and determine the fair value of such parcel, and shall make written report to the Commonwealth or the city of the same. The reasonable fees and expenses of the appraiser or appraisers shall be paid by the Commonwealth or the city. The Commonwealth or the city shall forthwith by writing mailed to such owner offer such parcel to such owner at the value as determined by the report of a majority of such appraisers, or by that of the sole appraiser in case of the appointment of one appraiser.

Section 17. If such owner shall in writing accept said offer within two weeks after the date when the same is mailed to such owner, the Commonwealth or the city shall convey such parcel to such owner on payment of the purchase money to the Commonwealth or the city as the case may be within thirty days after the acceptance of the offer. The conveyance shall be by deed, with or without covenants of title and warranty, executed and acknowledged in the name and behalf of the Commonwealth or the city by the officers or board which have or has taken such parcel, or by their or its successors or successor, and may be made subject to such restrictions as the Commonwealth or city may in writing have notified the appraisers or appraiser at the time of their or his appointment would be imposed on such parcel.

Section 18. If such owner fails to accept the offer within the time limited, or having accepted it fails to make payment or tender of the purchase money within one month thereafter, the Commonwealth or the city, if it does not take said adjoining property under the provisions of section twenty-nine, may at any time thereafter sell such parcel at public auction.

Section 19. The Commonwealth or the city may acquire by gift or purchase any land the taking of which may be authorized by this act, and shall hold and dispose of the same as in the case of land taken under this act.

Section 20. The court shall fix the compensation and expenses of the commissioners appointed under section six, including in such expenses the compensation of any expert or experts employed under the provisions of section seven; and the amount so fixed shall be paid by the county.

Section 21. Where the court, as provided in section eight, decrees the taking of part but not all of the land shown as proposed to be taken on a plan filed in accordance with section five and outside the boundaries of

the proposed public work, or decrees that none of such land shall be taken, the restrictions on the erection or alteration of buildings on such land or part thereof not taken, and as to making additions thereto, imposed by section five shall cease and determine from the date of the filing of the decree.

Section 22. A city may at any time, by proceedings under chapter forty-eight of the Revised Laws and acts in amendment thereof and in addition thereto or under any act giving it power to lay out, alter, relocate or widen ways, or in connection with proceedings under this act, take in fee any land in which it has previously taken or acquired an easement for a public highway, or may acquire such fee by gift or purchase.

Section 23. In the case of any public work for which land is taken under this act, betterments may be assessed upon any property not taken in cases where any law in force at the time authorize their assessment when land is taken for a public work of the same nature as that for which it is taken under this act. Such betterments shall be assessed in accordance with the provisions of such law.

Section 24. The powers conferred by this act shall be in addition to those conferred on public officers and boards by existing law, and shall apply in the case of any public work situate within the limits of any city, notwithstanding any limitations with regard to taking, laying out, widening, relocating or altering or other public works in the city of Boston or elsewhere.

Section 25. Whenever there is a taking under the provisions of this act of land within the boundaries of a public work, such taking shall be effectual as of the date of the filing under the provisions of section five of the plan described in that section; and whenever there is a taking of land outside of such boundaries either by reason of the time allowed by section six for an appeal having elapsed without such an appeal being made, or by a decree made as provided in section eight and filed as provided in section ten, the last mentioned taking shall relate back and become effectual as of the date of the filing of said plan as provided in section five.

Section 26. The posting, publication, mailing or serving of notices under this act may be done by any officer or member of a board acting on behalf of the Commonwealth or city with regard to the taking in connection with which the notice is given, or member of a commission appointed under the provisions of this act, or his or their servants or agents. Such posting, publishing, mailing or serving may be done by copy and the return thereof by any such officer or member of a board or commission shall be conclusive evidence of such posting, publication, mailing or service. Such a return may be recorded in any registry of deeds in which any of the land included in such taking lies, but such record shall not be necessary to the conclusiveness of such return.

Section 27. In case the land included in the same taking or proposed

taking under this act lies in two or more counties or districts, the memorandum plans and decrees with regard thereto shall be recorded in the registries of deeds for each district; but where land proposed to be taken outside the boundaries of the public work lies in more than one county an appeal from the action of the Commonwealth or city as provided in section six shall be taken in one county only, and appeals with regard to land lying in the other county or counties shall be taken in the same proceeding in which an appeal is first made. If an appeal is made in two or more counties at the same time it shall be prosecuted in the court for the county in which the greater part of the area of the land proposed to be taken lies.

Section 28. The Commonwealth or city, as the case may be, may by deed executed, acknowledged and recorded according to the laws of the Commonwealth, abandon any land taken by it under the provisions of this act, and such abandonment shall revest the title thereof, as if it had never been taken, in the persons, their heirs and assigns in whom it was vested at the time of the taking. Such an abandonment may be pleaded in reduction of damages in any suit therefor on account of such taking.

Section 29. If the owner of property adjoining a parcel taken under this act and outside the boundaries of a public work fails to accept an offer to sell such parcel to such owner made under the provisions of section sixteen, or having accepted such offer, fails to make payment or tender of the purchase money within thirty days thereafter, the Commonwealth or city shall cause such parcel to be sold by public auction, subject to such restrictions as the Commonwealth or city may impose. Land sold under this section shall be conveyed to the purchaser in the same manner as land conveyed under the provisions of section seventeen.

Section 30. This act shall take effect upon its passage.

D. Acts of Massachusetts 1912, Chapter 186.(1)

Section 1. The city of Worcester is hereby authorized to take in fee for the purpose of widening Belmont street, so-called, in that city, the whole or parts of a strip of land, not exceeding one hundred and sixty feet in depth, from the southerly side of Belmont street between the point of intersection of the easterly line of Warden street with the southerly line of Belmont street easterly to the point of intersection of the westerly line of Lake Avenue with the southerly line of Belmont street.

Section 2. After so much of the land or property as is taken by the city for the purpose of widening Belmont street on the southerly side thereof, in accordance with the provisions of section one, has been appropriated for such street as is needed therefor, the city may sell the remainder for value, with or without suitable restrictions.

Section 3. This act shall take effect upon its passage.

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(1) This is the only special legislative act passed on the subject of excess condemnation in Massachusetts since the adoption of the constitutional amendment in 1911.

E. Laws of Ohio 1904. Annotated Statutes C. 2, p. 755.(1)

Section 10. All municipal corporations shall have power to appropriate, enter upon and hold, real estate within their corporate limits for the following purposes:

12th. For establishing esplanades, boulevards, parkways, park grounds, and public reservations in, around and leading to public buildings and for the purpose of reselling such land with reservations in the deeds of such resale as to the future use of said lands so as to protect public buildings and their environs and to preserve the view, appearance, light, air and usefulness of public grounds occupied by public buildings and esplanades and parkways leading thereto.

F. Laws of Pennsylvania 1907, No. 315.(1)

Section 1. Be it enacted, &c., That it shall be lawful for, and the right is hereby conferred upon, the cities of this Commonwealth to purchase, acquire, enter upon, take, use, and appropriate private property, for the purpose of making, enlarging, extending, and maintaining public parks, parkways, and playgrounds within the corporate limits of such cities, whenever the councils thereof shall, by ordinance or joint resolution, determine thereon: Provided, That where such private property is outside of the city, it may be annexed thereto by ordinance of said city: And provided, That where any poorhouse properties are so taken, and such cities shall have made adequate provisions for thereafter accommodating and supporting the poor of the districts, wards, and townships within such cities, wherein such poorhouses are located, nominal damages only shall be allowed for such taking, and the land shall be held on condition that such city shall continue to make adequate provisions for the poor of such districts, wards, or townships.

Section 2. It shall be lawful for, and the right is hereby conferred upon, cities of this Commonwealth to purchase, acquire, enter upon, take, use, and appropriate neighboring private property, within two hundred feet of the boundary lines of such property so taken, used, and appropriated for public parks, parkways, and playgrounds, in order to protect the same by the resale of such neighboring property with restrictions, whenever the councils thereof shall, by ordinance or joint resolution, determine thereon: Provided, That in the said ordinance or joint resolution, the councils thereof shall declare that the control of such neighboring property, within two hundred feet of the boundary lines of such public parks, parkways, or playgrounds, is reasonably necessary, in order to protect such public parks, park-

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(1) This act, which was passed before the adoption of the constitutional amendment in 1912, was never utilized.

(1) This act was declared unconstitutional in Philadelphia Mutual Life Insurance Company *v.* Philadelphia, 88 Atl. 904.

ways, or playgrounds, their environs, the preservation of the view, appearance, light, air, health, or usefulness thereof.

Section 3. That it shall be lawful for, and the right is hereby conferred upon, the cities of this Commonwealth to resell such neighboring property, with such restrictions in the deeds of resale in regard to the use thereof as will fully insure the protection of such public parks, parkways, and playgrounds, their environs, the preservation of the view, appearance, light, air, health and usefulness thereof, whenever the councils thereof shall by ordinance of joint resolution, determine thereon.

Section 4. The taking, using, and appropriating, by the right of eminent domain as herein provided, of private property for the purpose of making, enlarging, extending, and maintaining public parks, parkways, and playgrounds, and of neighboring property, within two hundred feet of the boundary lines of such public parks, parkways, and playgrounds, in order to protect such public parks, parkways, and playgrounds, their environs, the preservation of the view, appearance, light, air, health, and usefulness thereof, by reselling such neighboring property, with such restrictions in the deeds of resale as will protect said property, so taken for the aforesaid purpose, is hereby declared to be taking, using, and appropriating of such private property for public use: Provided, however, That the proceeds arising from the resale of any such property, so taken, shall be deposited in the treasury of said cities, and be subject to general appropriation by the councils of said city.

Section 5. In all cases wherein cities of this Commonwealth shall hereafter take, use, and appropriate private property for the aforesaid purposes, by ordinance or joint resolution, if the compensation and damages arising therefrom cannot be agreed upon by the owners thereof and such cities, such compensation and damages shall be considered, ascertained, determined, awarded, and paid in the manner provided in an act entitled, "An act providing for the manner of ascertaining, determining, awarding, and paying compensation and damages in all cases where municipalities of this Commonwealth may hereafter be authorized by law to take, use, and appropriate private property for the purpose of making, enlarging, and maintaining public parks within the corporate limits of such municipality," approved the eighth day of June, Anno Domini one thousand eight hundred and ninety-five.

Section 6. All acts or parts of acts inconsistent herewith are hereby repealed.

G. Acts of Connecticut 1907, No. 61.(1)

Section 7. Said city of Hartford, acting through said commission or otherwise, shall have power to appropriate, enter upon, and hold in fee real estate within its corporate limits for establishing esplanades, boule-

(1) Hartford has on several occasions used this act with reference to small gores.

yards, parkways, park grounds, streets, highways, squares, sites for public buildings and reservations in and about and along and leading to any or all of the same; and, after the establishment, layout, and completion of such improvements, may convey any real estate thus acquired and not necessary for such improvements, with or without reservations concerning the future use and occupation of such real estate so as to protect such public works and improvements and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works.

H. Laws of Oregon 1913, Chapter 269.(1)

Section 2. It shall be lawful for, and the right is hereby conferred upon any incorporated city of this State having 10,000 or more inhabitants to purchase, acquire, take, use, enter upon and appropriate land and property in excess of what may be needed for any such public squares, parks, or playgrounds; provided, however, that in the ordinance providing therefor the municipal authorities thereof shall specify and describe the land authorized to be taken, purchased, acquired, used and appropriated, which land shall not embrace more than 200 feet beyond the boundary line of the property to be used for such public squares, parks, or playgrounds, in order to protect the same by the re-sale of such neighboring property with restrictions whenever the councils thereof shall by ordinance determine thereon; provided; further, that in the said ordinance the councils thereof shall declare that the control of such neighboring property within 200 feet of the boundary lines of such public squares, parks or playgrounds, is reasonably necessary, in order to protect such public squares, parks or playgrounds, their environs, the preservation of the view, appearance, light, air, health or usefulness thereof.

Section 3. That after so much of said land and property referred to in Section 2 of this act has been appropriated, as is needed, for public squares, parks or playgrounds aforesaid, the municipal authorities of such city may by ordinance authorize the sale of the remainder of such land or property and impose such restrictions in any deed or deeds of re-sale as may be deemed necessary or proper; provided, however, that such ordinance shall specify correctly and describe the land or property to be sold, and the restrictions in regard to the use thereof as will fully insure the protection of such public squares, parks or playgrounds, their environs, the preservation of the view, appearance, light, air, health or usefulness thereof, whenever the councils thereof shall by ordinance determine thereon and which are to be imposed and inserted in such deed or deeds of re-sale.

Section 4. That the taking, using, acquiring and appropriating of private property for any of the purposes herein specified, is hereby declared

(1) This act does not apply to Portland, as the legislature cannot amend the charter of that city. *Branch* v. *Albee*, 142 Pac., 598.

to be taking, using and appropriating such private property for public use; provided, however, that the proceeds arising from the re-sale of any neighboring property taken in excess of what may be necessary for the actual construction, opening, widening, extending and laying out of any such public square, park or playground, as in this act provided, shall be deposited in the treasury of said city and be used in the payment of the interest and as a sinking fund to retire any bond issues herein authorized. Any surplus arising from such transaction shall be turned over to and for the use of the park department of such city.

I. Acts of Virginia 1905, Chapter 194.(1)

Section 1. Be it enacted by the general assembly of Virginia, That any city or town of this Commonwealth may acquire by purchase, gift, or condemnation property adjoining its parks, or plats on which its monuments are located, or other property used for public purposes or in the vicinity of such parks, plats or property, which is used and maintained in such a manner as to impair the beauty, usefulness or efficiency of such parks, plats or public property, and may likewise acquire property adjacent to any street, the topography of which, from its proximity thereto, impairs the convenient use of such street, or renders impracticable without extraordinary expense, the improvement of the same, and the city or town so acquiring any such property may subsequently dispose of the property so acquired, making limitations as to the uses thereof, which will protect the beauty, usefulness, efficiency or convenience of such parks, plats or property.

Section 2. This act shall be in force on and after ninety days from the adjournment of the general assembly of Virginia.

K. Laws of Maryland 1908, Chapter 166.(1)

Section 1. Be it enacted by the General Assembly of Maryland, That the sub-division, entitled "Condemnation of Property," of section 6 of article 4 of the Public Local Laws of Maryland, title "City of Baltimore," as enacted by chapter 123 of the Acts of the General Assembly of Maryland of the year 1898, and also the paragraph added to the same section, immediately after the above-mentioned sub-division, by chapter 397 of the Acts of 1906, of the General Assembly of Maryland, entitled "An Act to add a new paragraph to section 6 of article 4, entitled "City of Baltimore," of the Code of Public Local Laws of Maryland, to come in immediately after the conclusion of the paragraph in said section, entitled "Condemnation of Property," and to be entitled "Condemnation of Property for Esplanades

(1) No city has as yet taken advantage of this act.

(1) As interpreted by the courts in *Bond* v. *Mayor and City Council of Baltimore*, 116 Md. 683, this act does not confer the power of excess condemnation upon Baltimore but only the power to acquire such additional adjacent land as might be necessary for connections, cuts, fills, parking, etc.

and the Like," be and the same are hereby repealed and re-enacted so as to read as follows: Condemnation of Property—To acquire by purchase or condemnation any land or any interest therein which it may require for schoolhouses, enginehouses, courthouses, markets, streets, bridges and their approaches, the establishment or enlargement of parks, squares, gardens or other public places, the establishment of esplanades, boulevards, parkways, park grounds or public reservations, around, adjacent, opposite, or in proximity or leading to any public building or buildings, or which it may require for any other public or municipal purpose; and also any and all land and property or interest in land and property adjoining and extending such distance as may be adjudged necessary from any property in use or about to be acquired for such esplanade, boulevard, parkway, park grounds or public reservation, as aforesaid, the use of which said adjacent property it may be deemed necessary or beneficial to subject to lawful restrictions or control, in order to better protect or enhance the usefulness of such public building or buildings, or in any manner to promote the interests of the public therein, or to more fully effectuate the purposes of the establishment of such esplanade, boulevard, parkway, park grounds or public reservations; and to sell thereafter such adjacent lands or property, subject to such reservations or restrictions as to the subsequent uses thereof, as may appear advisable for the protection of such public building or buildings, or for enhancing the usefulness thereof, or in any manner to promote the interests of the public therein, or for better insuring the protection or usefulness of such esplanade, boulevard, parkway, parkgrounds or public reservations, or in any manner to better accomplish the purposes and serve the public interests for which they shall have been or shall be established. The Mayor and City Council of Baltimore may prescribe the procedure for condemnation of any land or property situated wholly within the city of Baltimore which under the foregoing provisions it is authorized to condemn, but such procedure as the said Mayor and City Council of Baltimore, may adopt shall include provision for reasonable notice to the owner or owners, and for appeals to the Baltimore City Court by any person interested, including the Mayor and City Council of Baltimore, from the decision of any commissioners or other persons appointed to value any such land or property, or interest therein. Nothing herein contained shall be construed as depriving the city of any power of condemnation for any purpose already vested in it. The Mayor and City Council of Baltimore shall have full power and authority to provide by ordinance for ascertaining whether any and what amount of benefits will accrue to the owner or possessor of any ground or improvements within the City of Baltimore by reason of the establishment or enlargement of any parks, squares, gardens, esplanades, boulevards, parkways, park grounds, public reservations or other public places, for which said owner or possessor ought to pay compensation, and to provide by ordinance for assessing or levying the amount of such benefits on the property of per-

sons so benefited; provided, that provision is made therein for reasonable notice to the person or persons against whom such benefits are to be assessed, and provided that provision be made for appeals to the Baltimore City Court by any person or persons interested, including the Mayor and the City Council of Baltimore, from the decision of any board, commissioners or other persons appointed or authorized to assess such benefits.

Section 2. And be it further enacted, That this Act shall take effect from the date of its passage.

Appendix III.

Constitutional Amendments Adopted.

A. Amendment to Constitution of Massachusetts Adopted 1911.

Article X, Part 1. The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the Commonwealth, or by a county, city, or town, of more land and property than are needed for the actual construction of such highway or street; provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

B. Amendment to Constitution of New York Adopted 1913.

Article I, Section 7. The legislature may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or re-locating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased.

C. Amendment to Constitution of Ohio Adopted 1912.

Article XVIII, Section 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appro-

priated or otherwise acquired, but said bonds shall be a lien only against the property so acquired, for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

D. Amendment to Constitution of Wisconsin Adopted 1912.

Article XI, Section 3a. The State or any of its cities may acquire by gift, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, layout, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public work and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works.

NEW YORK CITY EXCESS CONDEMNATION ACT.

Local—New York, Kings, Queens, Richmond and Bronx Counties.

LAWS OF NEW YORK.—By Authority.

CHAP. 593.

AN ACT to amend the Greater New York charter, in relation to authorizing the city of New York to acquire more land and property than is needed for actual construction in laying out, widening, extending or relocating parks, public places, highways or streets.

Became a law May 11, 1915, with the approval of the Governor. Passed, three-fifths being present.
Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Greater New York charter, re-enacted by chapter four hundred and sixty-six of the laws of nineteen hundred and one, is hereby amended by adding two new sections to be inserted in title four, chapter seventeen thereof after section nine hundred and seventy, to be known as sections nine hundred and seventy-a and nine hundred and seventy-b, to read as follows:

DEFINITIONS; POWER TO CONDEMN EXCESS LANDS.

Definitions.

§ 970-a. When used in this section or section nine hundred and seventy-b of the Greater New York charter, unless otherwise expressly stated, or unless the context or subject-matter otherwise requires, the word "improvement" shall be construed as synonymous with the phrase "laying out, widening, extending or relocating a park, public place, highway or street," or with the phrase "acquisition of title to real property required for laying out, widening, extending or relocating a park, public place, highway or street." The term "excess lands," or the term "additional lands," or the term "additional real property" shall each be construed as synonymous with the phrase "real property in addition (or additional) to the real property needed (or required) for laying out, widening, extending or relocating a park, public place, highway or street." "The board" shall be construed as synonymous with the "board of estimate and apportionment." The city of New York in acquiring real property for any improvement may acquire more real property than is needed for the actual construction of the improvement. The board of estimate and apportionment may authorize the city of New York to acquire additional real property in

Excess lands may be acquired.

Power of board of estimate.

connection with any improvement, and direct that the same be acquired with the real property to be acquired for the improvement; provided that such additional real property shall be not more than sufficient to form suitable building sites abutting on the improvement. The title which the city of New York shall acquire to additional real property shall in every case be the fee simple absolute. Additional real property shall be acquired by the city in connection with a street improvement only when the title acquired for the improvement shall be in fee. The acquisition of title to additional real property in connection with an improvement shall be authorized by the board in the same manner and at the same time as the acquisition of title to the real property required for the improvement is authorized. When the board shall have authorized the acquisition of title to additional real property in connection with an improvement, title to such additional real property shall be acquired by the city in the manner and according to the procedure (except in such respects as herein set forth) provided for the acquisition of title to the real property required for the improvement and in the same proceeding in which title to the real property required for the improvement shall be acquired. When the board shall authorize the acquisition of additional real property in connection with any improvement, it shall cause to be prepared and shall adopt a map showing the real property to be acquired for the improvement and such additional real property in connection with the real property to be acquired for the improvement, and such map, when approved by the mayor, shall be certified by the secretary of the board and filed, prior to the application to condemn the same, as follows: One copy thereof in the office in which conveyances of real property are required by law to be recorded in each county in which the real property or any part thereof shown on such map is situated; one copy thereof in the office of the corporation counsel; one copy thereof in the office of the president of each borough in which the real property or any part thereof shown on such map is situated, and one copy thereof in the office of the board. When the board shall have authorized the acquisition of additional real property in connection with any improvement, such additional real property shall be separately described in the notice of application to condemn by the supreme court without a jury or in the notice of application for the appointment of commissioners of estimate, as the case may be, and in the petition presented on any such application, and separately shown on the rule map attached to the petition and on the damage map in the proceeding, and said notice and petition shall state what part of the real property to be condemned is required for the improvement, and what part thereof is to be acquired as additional real property. The acquisition of such additional real property, when authorized by the board, shall be deemed to be for a public purpose. In a proceeding in which additional real property shall be acquired, the board, by a three-fourths vote, may direct that on the date of the entry of the order granting the application to condemn by the supreme court without

Limitation on amount.

Title in fee.

How and when authorized.

Manner of acquiring title.

Map.

Description.

Acquisition deemed for public purpose.

when title to vest.

a jury, or on the date of the filing of the oaths of the commissioners appointed by the court, as the case may be, or on a date after either, specified in the resolution of the board, the title to the whole but not less than the whole of such additional real property to be acquired in the proceeding shall vest in the city of New York, provided that such resolution shall also direct the vesting in said city simultaneously of the title to all of the real property being acquired in the proceeding for the improvement; except that in a proceeding involving the acquisition of title to additional real property in connection with the acquisition of title to real property required for a street, highway or public place, the board shall not be required to vest, at one time, the title to all the additional real property to be acquired, provided, however, that in vesting title to parts of said additional real property every such part shall be of at least a block length along the improvement, and that no fractional portion of a block shall be contained in any such part, and provided that said board shall also direct that all the real property required for the street, highway or public place in such block or blocks shall vest in the city simultaneously. Upon the date of the entry of such order granting the application to condemn or upon the date of the filing of such oaths, as the case may be, or on such date after either, as may be specified by said board, the city of New York shall be and become seized in fee simple absolute to such additional real property. In all other cases, except as herein otherwise provided, title in fee simple absolute to such additional real property as may be acquired in any such proceeding shall vest in the city of New York upon the filing of the final decree of the court, or upon the entry of the order of the court confirming the report of the commissioners of estimate, as the case may be, as to such additional real property; and the reversal on appeal of the final decree or of the order confirming the report, as the case may be, or of any part of either, shall not operate to divest the city of title to any of the real property so acquired. In a proceeding in which excess lands shall be acquired, the board shall not have power to direct the vesting of title in the city to the real property required for the improvement without also directing the vesting of title in the city simultaneously to the excess lands being acquired in the proceeding in connection with the improvement, except that the board may, in the manner in this section provided, direct that title to the real property required for a street, highway or public place shall vest in the city of New York in any block of such street, highway or public place abutting which no excess lands are taken. In any proceeding in which excess lands shall be acquired, when title to any part less than the whole of the real property required for the street, highway or public place in any one block thereof, between legally existing public streets, shall vest in said city upon and by virtue of the entry of the decree of the court finally determining the awards for damages therefor, or on the date of the entry of the order confirming the report of the commissioners of estimate in relation thereto, as the case may be, title to the remainder of the real property

required for the street, highway or public place in the same block and title to the additional lands to be acquired in the proceeding abutting on the street, highway or public place in the same block, shall vest in said city simultaneously, and the reversal on appeal of the final decree of the court or of the order confirming the report of commissioners, as the case may be, or of any part of either shall not operate to divest the city of title to any of the real property so acquired for the street, highway or public place in the same block or to the additional lands abutting thereon. Upon the vesting of title in the city of New York, as in this section provided, to any such additional lands and to lands required for the improvement, the city of New York, or any person acting under its authority, may immediately, or at any time thereafter, take possession of the additional lands so vested and of the real property required for the improvement so vested, or any part or parts thereof, without any suit or proceeding at law for that purpose. In a proceeding in which additional lands shall have been authorized to be acquired in connection with the improvement, an owner may not convey to the city of New York any part of the real property to be acquired for the improvement, except upon the approval of the board of estimate and apportionment. After the institution of a proceeding pursuant to this title, the board of estimate and apportionment may amend the proceeding by authorizing the acquisition of lands additional to those required for the improvement, provided that title shall not have vested in the city of New York to any parcel of real property to be acquired for the improvement within the block between legally existing public streets, embracing the additional lands sought to be acquired. The said board may also amend any proceeding so as to exclude any or all additional lands being acquired in the proceeding, provided title to such additional lands shall not have vested in the city. The amendment shall be made in the manner provided in this title, and thereafter the proceeding shall be conducted in the same manner as if the additional lands included or excluded by the amendment had been included or had not been included in the proceeding at the time of the institution thereof. In case title to the real property required for the improvement and to the additional lands shall vest in the city prior to the entry of the final decree or order confirming the report of the commissioners, as the case may be, interest on the entire amount due to the owner for the real property acquired for the improvement, or for the excess lands, or for both, from the date of the vesting of title thereto to the date of the final decree or to the date of the report of the commissioners of estimate, as the case may be, shall be awarded as a part of such owner's compensation. All of the provisions of this title relative to the payment by the comptroller of sums awarded as damages and interest thereon, and to the advance payment on account of such damages, and relative to the assignment or pledge of awards, shall apply to awards of damages for the taking of additional lands. After title to the real property required for the improvement and

Taking possession.

Cession.

Amending proceedings by including or excluding excess lands.

Interest on awards.

Payment of awards.

Disposition of excess lands.

to the additional lands shall have vested in the city, the additional lands may be either held and used by the city, or sold or leased by it in the manner provided by the Greater New York charter. The board of estimate and apportionment may provide that such additional lands shall be sold or leased subject to such restrictions, covenants or conditions as to location of buildings with reference to the real property acquired for the improvement, or the height of buildings or structures, or the character of construction and architecture thereof, or such other covenants, conditions or restrictions as it may deem proper; and such additional lands shall be sold or leased subject to such restrictions, covenants or conditions, if any, as the board of estimate and apportionment may have prescribed, which shall be set forth in the instrument of conveyance or lease.

Sale or lease; restrictions.

AUTHORITY TO ASSESS AND THE ASCERTAINMENT OF THE AMOUNT PROPERLY ASSESSABLE IN A PROCEEDING IN WHICH ADDITIONAL LANDS MAY BE ACQUIRED.

Damage borne by city or assessed.

§ 970-b. In every proceeding in which lands additional to those required for the improvement shall be acquired, the board may determine whether any, and if any, what portion of the damage due to the acquisition of title to the real property required for the improvement, shall be borne and paid by the city of New York; and the whole or the remainder of such damages shall be assessed upon the real property deemed to be benefited by the improvement in the manner and according to the procedure for levying assessments for benefit in proceedings had under this title. The board may also determine whether any, and if any, what portion of the costs and expenses of the proceeding, including the expenses of the bureau of street openings in the law department, incurred by reason of such proceeding, shall be borne and paid by the city of New York; and the whole or the remainder of such costs and expenses, including the expenses of the bureau of street openings, shall be assessed upon the real property deemed to be benefited by the improvement. Where part of a parcel of real property shall be acquired for an improvement, and the remainder or a portion of the remainder of such parcel in the same ownership shall be acquired in the same proceeding as excess lands, the portion of the damages due to the acquisition of the real property required for the improvement. shall be determined and stated separately from the entire damage due to each such owner. In determining the damages due to the acquisition of that portion of such parcel, which is required for the improvement (which shall be the portion thereof properly assessable), the same rule shall be applied as would govern the determination of damages for the taking of the real property required for the improvement, in case no excess lands were acquired. Where part of a parcel of real property shall be acquired for

Costs and expenses, ditto.

Award for excess lands separated.

Rules for determining damage.

the improvement, and the remainder or a portion of the remainder thereof in the same ownership shall be acquired in the same proceeding, as excess lands, the damages due to the acquisition of title to the real property required for the improvement (which shall constitute the portion of the owner's total damages as to such parcel, on account of the proceeding, which shall be properly assessable), shall, in every case, equal the amount which woul be awarded to such owner in case only that part of his real property, which shall be required for the improvement, were acquired. The aggregate of damages due to the acquisition of the real property required for the improvement shall be determined by the court or other tribunal authorized to determine the compensation to be paid to the owners, and when so determined, as aforesaid, shall, if the board of estimate and apportionment so direct, be assessed by the court or other tribunal authorized to levy the assessment for the improvement. The real property acquired by the city in addition to that required for the improvement shall be subject to assessment for benefit due to the improvement, and shall bear its proper share of the cost and expense of the proceeding, which may be levied and collected with the taxes upon the real property in one or more entire boroughs. The assessment, which shall be levied in any proceeding, upon the real property acquired in addition to that required for the improvement, shall not in the case of any parcel assessed exceed one-half the fair value thereof. Interest from the date of the vesting of title to the date of the final decree of the court or to the date of the final report of the commissioners, as the case may be, on the sum or sums determined as damages due to the acquisition of the real property required for the improvement, as hereinbefore provided, shall be included in and stated as a part of such damages due to the acquisition of title to the real property required for the improvement. Nothing in this section contained shall be construed as authorizing the awarding to an owner, part of whose real property is taken for the improvement, and the remainder or a portion of the remainder of whose real property is taken as additional lands, any greater amount of compensation than such owner shall be entitled to, by reason of the taking of his real property for the improvement and as additional lands, considered together as one parcel. The provisions of section nine hundred and seventy-a and of this section shall be construed as supplementing and extending the effect of the provisions of the other sections of this title so as to provide for the acquisition of title to additional lands in connection with an improvement and for the levying of assessments for benefit in such proceedings and nothing in section nine hundred and seventy-a or in this section contained shall be construed as limiting the effect of the provisions of the other sections of this title in their application to the acquisition of title to real property required for an improvement when acquired in a proceeding in which additional lands shall or shall not be acquired or to the levying of assessments for benefit in such proceedings, except as the provisions of the other

Only cost of required land to be assessed.

Excess lands subject to assessment.

Assessment not to exceed one-half value.

Interest included in cost.

Award not to exceed value of entire parcel.

Effect on other provisions of this title.

sections of this title are in section nine hundred and seventy-a and in this section expressly so limited in their application.

Section 2. This act shall take effect immediately.

State of New York,
Office of the Secretary of State. } ss.:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FRANCIS M. HUGO,
Secretary of State.

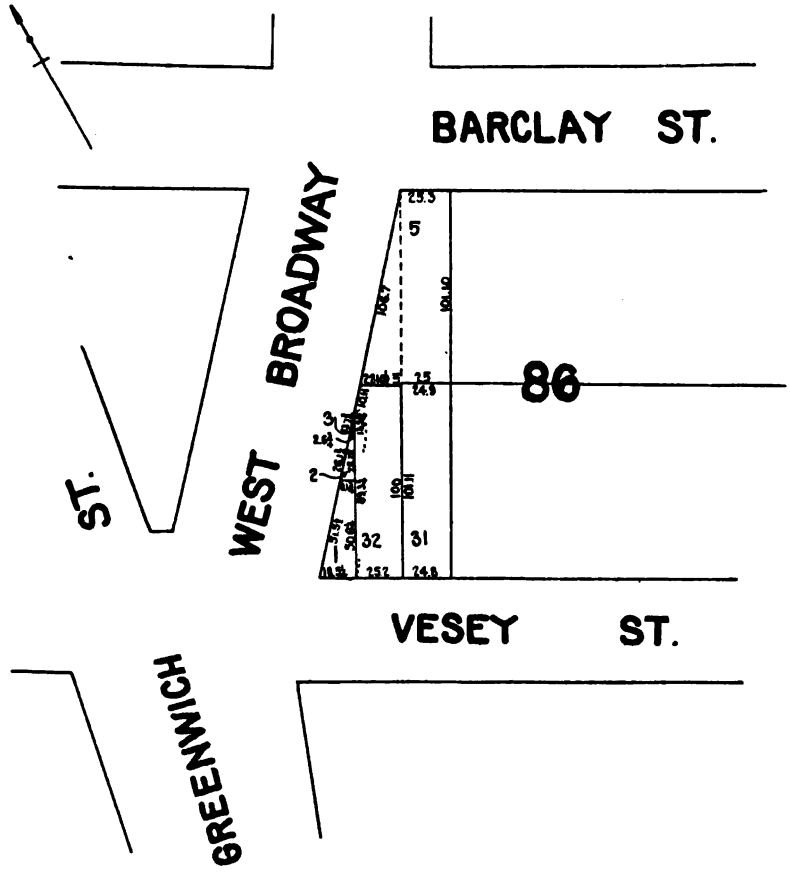
PHOTOGRAPHS AND MAPS SHOWING OPERATION OF SYSTEM HERETOFORE USED IN NEW YORK.

Explanatory Note.

These photographs and maps were prepared to show some of the results of the system of condemnation heretofore used in the absence of the power of excess condemnation. They indicate the damaged and unusable condition of lots mutilated by the improvement and lots so situated that appropriate buildings could not be erected. They were prepared under the direction of the Department of Taxes and Assessments by Mr. John A. R. Duntze, of that department.

BLOCK 86—EAST SIDE OF WEST BROADWAY, BETWEEN BARCLAY AND VESEY STREETS

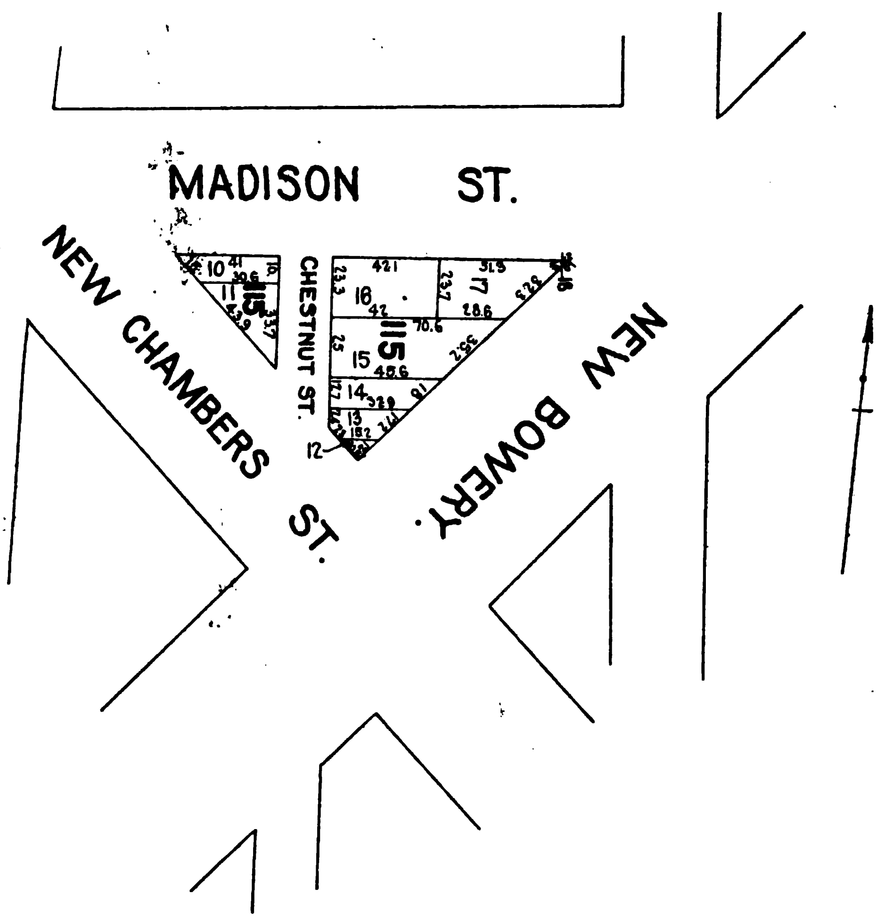
Widened 1894 Photographed 1915


BARCLAY ST.
WEST BROADWAY
ST.
86
5
3
2
32
31
VESEY ST.
GREENWICH

BLOCK 115—NEW CHAMBERS STREET, BETWEEN MADISON STREET AND NEW BOWERY; NEW BOWERY, BETWEEN MADISON STREET AND NEW CHAMBERS STREET

Widened 1856

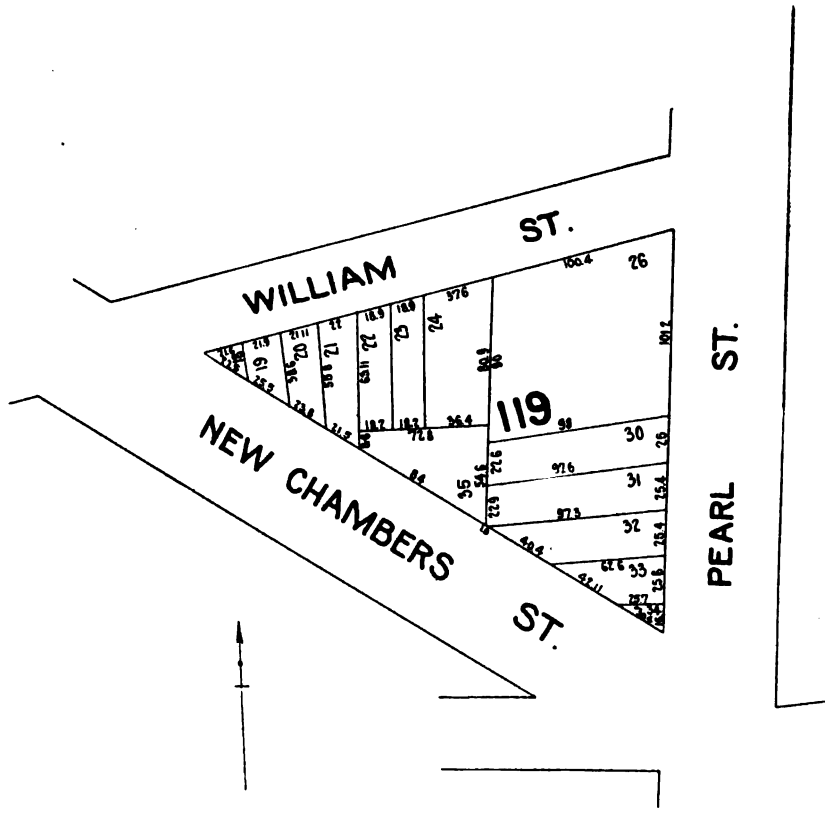
Photographed 1915


MADISON ST.
NEW CHAMBERS ST.
CHESTNUT ST.
NEW BOWERY.
115
115
10
11
12
13
14
15
16
17

BLOCK 119—NORTH SIDE OF NEW CHAMBERS STREET, BETWEEN WILLIAM AND PEARL STREETS

Widened 1856

Photographed 1915

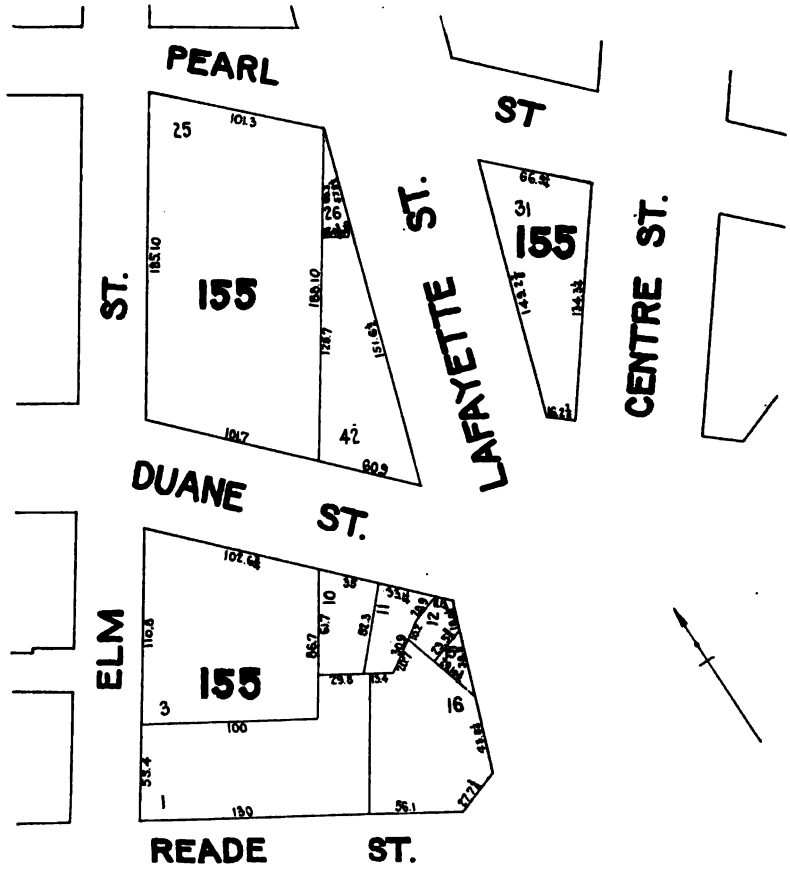

WILLIAM ST.
NEW CHAMBERS ST.
PEARL ST.
119
26
30
31
32
33
35

BLOCK 155—WEST SIDE OF LAFAYETTE STREET, BETWEEN READE AND PEARL STREETS

This view taken from 9th Floor Municipal Building

Widened 1903

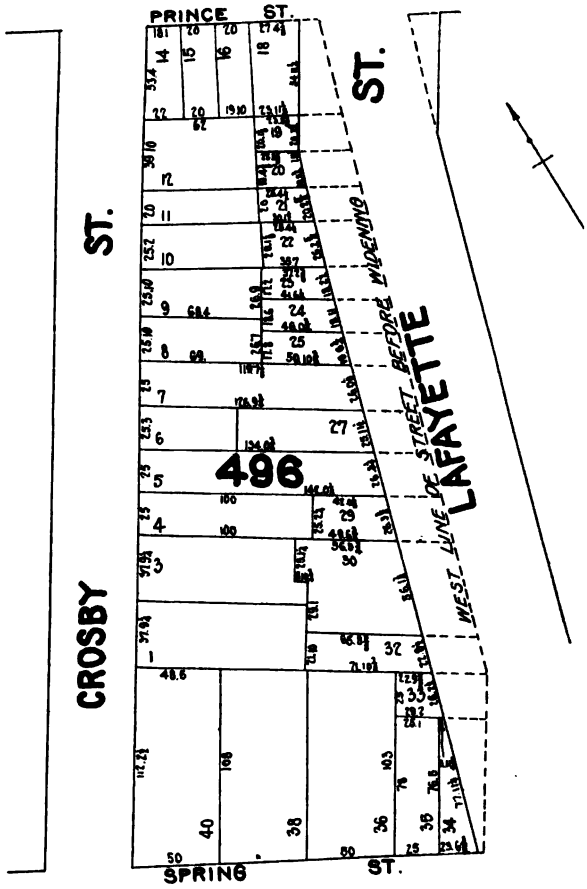
Photographed 1915


PEARL
ST
ST.
LAFAYETTE
CENTRE ST.
ST.
DUANE
ST.
ELM
READE
ST.
155
25
42
155
31
155
3
16
1

BLOCK 496—WEST SIDE OF LAFAYETTE STREET, BETWEEN SPRING AND PRINCE STREETS

Widened 1903

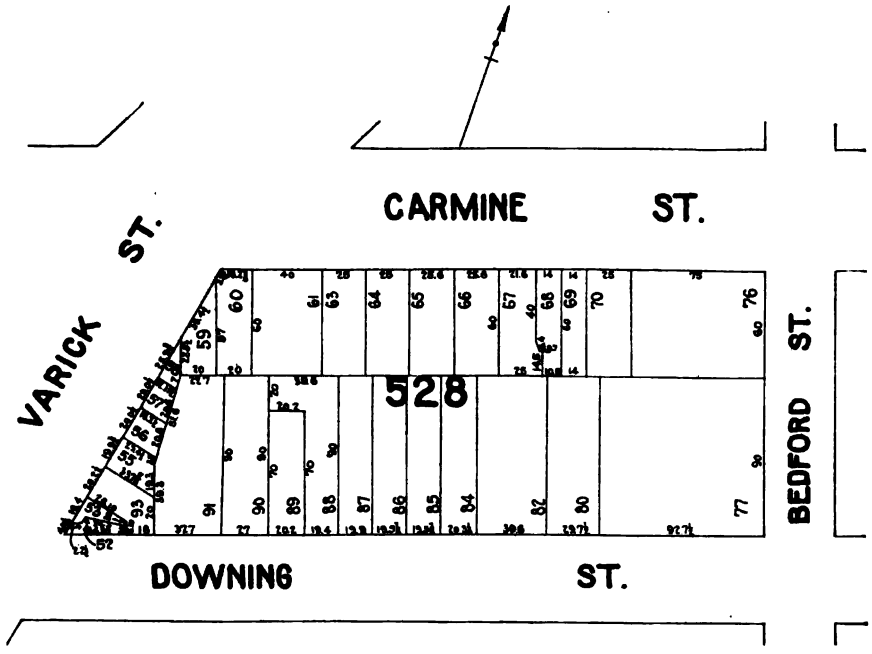
Photographed 1915


PRINCE ST.
CROSBY ST.
LAFAYETTE ST.
WEST LINE OF STREET - BEFORE WIDENING
SPRING ST.
496

BLOCK 528—EAST SIDE OF VARICK STREET, BETWEEN DOWNING AND CARMINE STREETS

Widened 1913

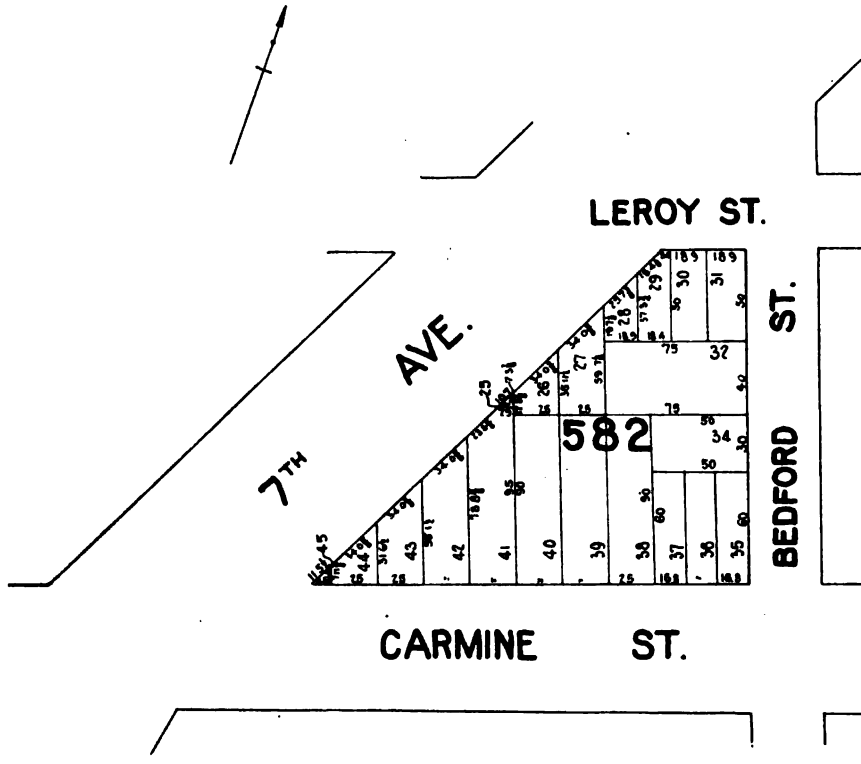
Photographed 1915


CARMINE ST.
VARICK ST.
BEDFORD ST.
DOWNING ST.
528

BLOCK 582—EAST SIDE OF SEVENTH AVENUE, BETWEEN CARMINE AND LEROY STREETS

Widened 1913

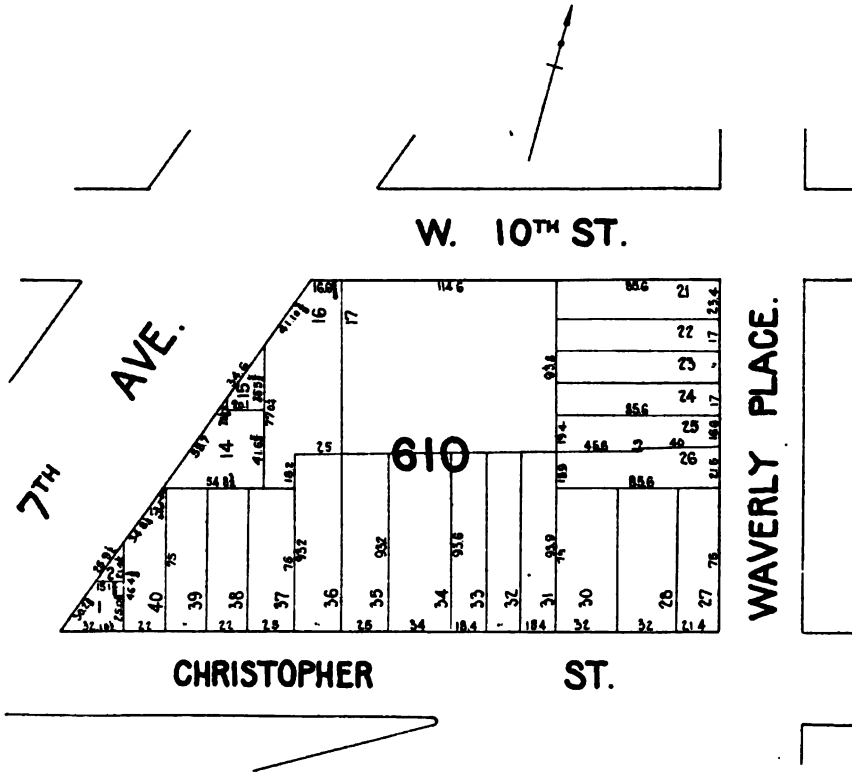
Photographed 1915


LEROY ST.
7TH AVE.
BEDFORD ST.
582
CARMINE ST.

BLOCK 610—EAST SIDE OF SEVENTH AVENUE, BETWEEN CHRISTOPHER AND WEST TENTH STREETS

Widened 1913

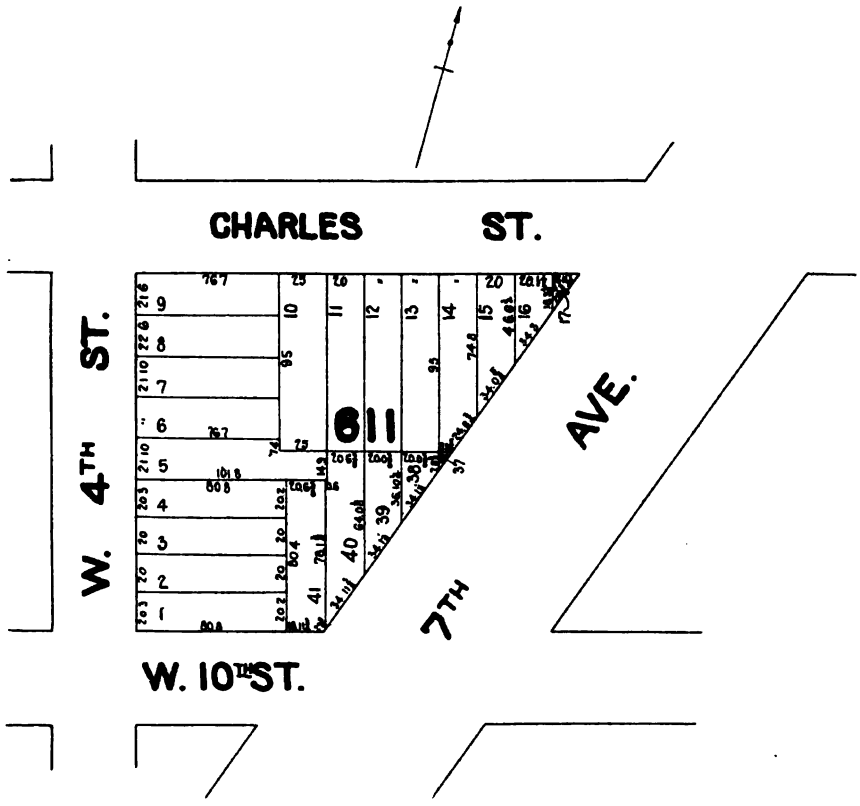
Photographed 1915

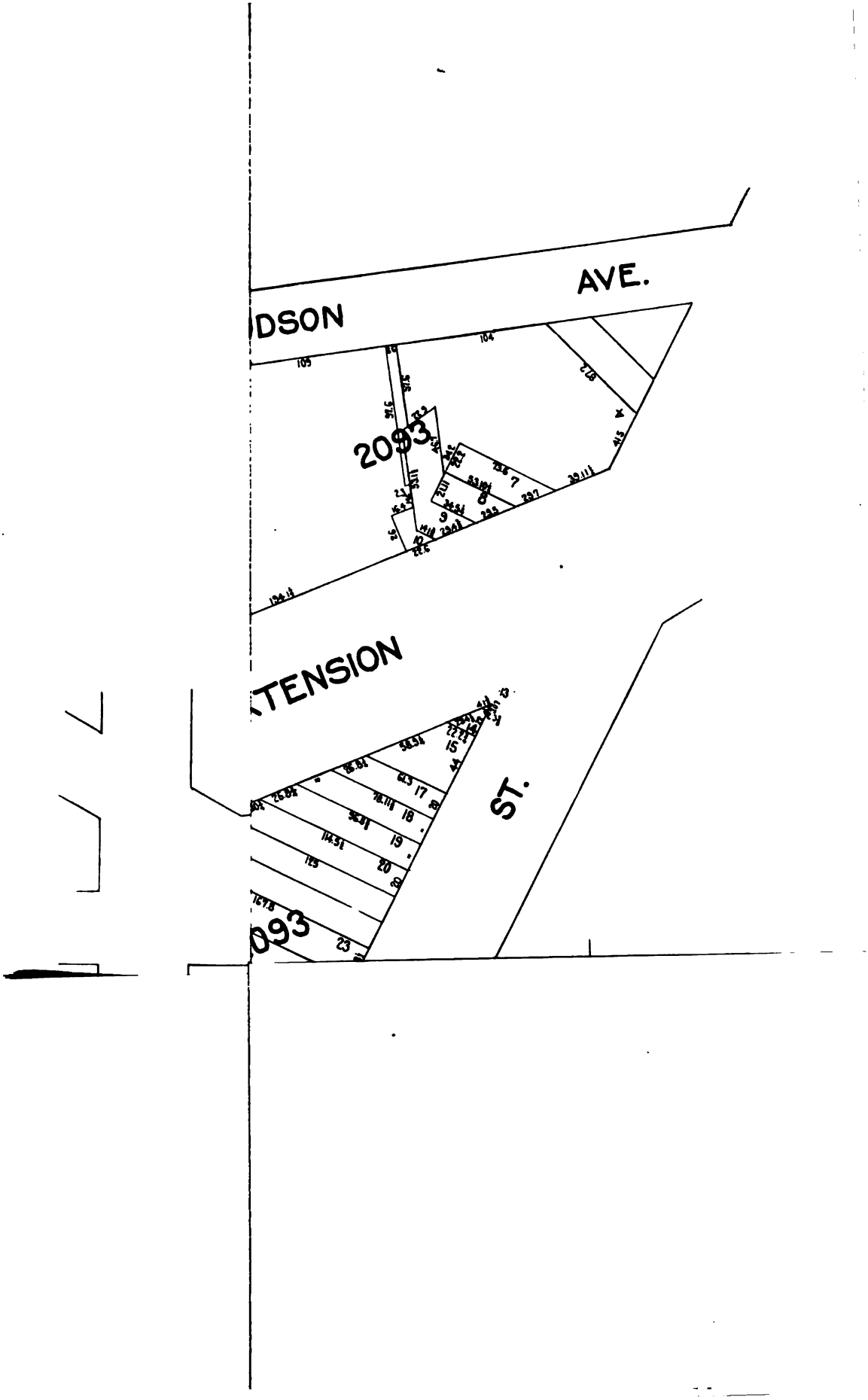

W. 10TH ST.
7TH AVE.
610
WAVERLY PLACE.
CHRISTOPHER ST.

BLOCK 611—WEST SIDE OF SEVENTH AVENUE, BETWEEN WEST TENTH AND CHARLES STREETS

Widened 1913

Photographed 1915


CHARLES ST.
W. 4TH ST.
AVE.
7TH
W. 10TH ST.
611


DSON
AVE.
2093
TENSION
ST.
093

INDEX